TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1880.

No. 160.

BRUNO BEAUPRE, FRANK KEOGH, AND JOHN F. ERICK, PLAINTIFFS IN ERROR,

vs.

DANIEL R. NOYES, CHARLES F. KOYES, AND [illegible] H. CUTLER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED OCTOBER 9, 1880.

It is therefore asked that the appeal be dismissed with costs and damages; that it be affirmed as a delay case, or whatever may be proper in the premises.

Respectfully,

D. M. RODMAN,
Attorney for Appellees.

ELI H. BROWN,
Of Counsel.

138-[illegible]
138-397 & 40 v

TRANSCRIPT OF RECORD.

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No. 160.

BRUNO BEAUPRE, FRANK KEOGH, AND JOHN F. BRODERICK, PLAINTIFFS IN ERROR,

vs.

DANIEL R. NOYES, CHARLES P. NOYES, AND EDWARD H. CUTLER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED OCTOBER 8, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 160.

BRUNO BEAUPRE, FRANK KEOGH, AND JOHN F. BRODERICK, PLAINTIFFS IN ERROR,

vs.

DANIEL R. NOYES, CHARLES P. NOYES, AND EDWARD H. CUTLER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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a Supreme Court of the United States. October Term, A. D. 1890.

BRUNO BEAUPRE *et al.*, Plaintiffs in Error,
vs.
DANIEL R. NOYES *et al.*, Defendants in Error.
} No. 159. October Term, 1890.

BRUNO BEAUPRE *et al.*, Plaintiffs in Error,
vs.
DANIEL R. NOYES *et al.*, Defendants in Error.
} No. 160. October Term, 1890.

Whereas the respective returns upon the respective writs of error in the above-entitled causes are practically the same, the first writ of error (cause No. 159) being taken from the judgment of the supreme court of the State of Minnesota affirming an order of the district court for Ramsey county, Minnesota, refusing to grant defendants' (plaintiffs in error) motion to vacate and set aside the verdict rendered therein for the plaintiffs in said district court and grant a new trial in a certain cause wherein said Daniel R. Noyes *et al.* were plaintiffs and said Bruno Beaupre *et als.* were defendants; and inasmuch as judgment upon the verdict in said district court had not been rendered at the time of the issuance of said first writ of error, and there was question whether the same would be determined upon its merits on that account, the said plaintiffs in error applied
b for and procured the issuance of a second writ to review the judgment of the supreme court of the State of Minnesota affirming the judgment of said district court upon said verdict, to the end that the Federal questions, if any, which arose on the trial of said cause in the courts of the State of Minnesota might be fully determined upon the merits; and

Whereas the return upon the writ of error in cause No. 160 on the calendar for the October, A. D. 1890, term of said Supreme Court of the United States contains substantially all that is contained in the return upon the writ of error in cause No. 159 of said term, except the opinion of the supreme court of the State of Minnesota made upon the affirmance of the order of the district court aforesaid, which opinion is found under the title of Noyes *et al. vs.* Beaupre *et al.*, in 36 Minnesota Reports, at page 49:

Now, to the end that the errors assigned upon said respective writs (which are the same in both the above-entitled causes) may be adjudicated upon the merits and to save unnecessary expense of printing—

It is hereby stipulated and agreed that the printing of the record in said cause No. 159 be, and the same hereby is, waived, and that said cause No. 159 abide the event and be governed by the decision of the Supreme Court of the United States that may be rendered in said cause No. 160; that no point shall be raised that the record in cause No. 159 is not printed, but that the same force and effect shall

be given to all assignments of error raised as would be in case both records were printed and the causes argued together.

J. V. D. HEARD,
Attorney for Plaintiffs in Error.
C. K. DAVIS,
Attorney for Defendants in Error.

c [Endorsed:] Supreme Court U. S. 1890, Oct'r term. No. 159 & No. 160. Bruno Beaupre *et al.*, pl'ffs in error, *vs.* Daniel R. Noyes & *al.* Stipulation not to print record in No. 159, & that it abide decision in No. 160. Filed Sept. 9, 1890.

d STATE OF MINNESOTA, *ss:*

OFFICE OF THE CLERK OF SUPREME COURT.

Answer of the Judges of the Supreme Court of the State of Minnesota, in the Within Writ Mentioned.

To the Supreme Court of the United States:

The judges of the supreme court of the State of Minnesota, by the clerk of that court, hereby certify and return to the annexed writ of error—

That the annexed copy of record contains, comprises, and constitutes a true and complete transcript of the final judgment, judgment-roll, record, and proceedings had in the supreme court of the State of Minnesota in the case between Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler, plaintiffs and respondents, and Bruno Beaupre, Frank Keogh, and John F. Broderick, defendants and appellants, including also copy of the petition for said writ of error and of the supersedeas bond given in that behalf and the original citation and proof of service thereof, as the same remain of record and on file in the office of the clerk thereof.

In testimony whereof the clerk of the supreme court of the State of Minnesota has hereunto subscribed his name and has caused the seal of that court to be hereunto duly affixed, at his office, in the capitol, at St. Paul, in the State of Minnesota, on the 3rd day of October, A. D. 1887.

[Seal of the Supreme Court, State of Minnesota.]

J. D. JONES,
Clerk of the Supreme Court of the State of Minnesota.

e UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity in which a decision could be had in said suit

between Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler as plaintiffs and Bruno Beaupre, Frank Keogh, and John F. Broderick as defendants, wherein is drawn in question the construction of a clause of the Constitution of the United States and also the construction of a statute of the United States, and the decision was against the title, right, privilege, immunity, and exemption specially set up or claimed under such clause of the Constitution and under such statute, a manifest error hath happened, to the great damage of said Bruno Beaupre, Frank Keogh, and John F. Broderick, as by their petition and proceedings appears—

We, being willing that the error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record of the proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

f Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 29th day of April, in the year of our Lord one thousand eight hundred and eighty-seven.

OSCAR B. HILLIS,
Clerk of the Circuit Court of the United States
for the District of Minnesota.

g [Endorsed:] Court file 4809. State of Minnesota, county of Ramsey. District court, second judicial district. Bruno Beaupre *et al.*, plaintiff-, against D. R. Noyes *et al.*, defendant-. Writ of error. Filed Ma- ——, -87. J. D. Jones, clerk. Due service of the within admitted by receipt of a copy at ——, Minnesota, this — day of ——, 188-. —— ——, att'y for —. Warner & Lawrence, attorneys, St. Paul, Minn.

h UNITED STATES OF AMERICA, *ss:*

To Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler and their attorney, James N. Granger:

GENTLEMEN: You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein Bruno Beaupre, Frank Keogh, and John F. Broderick are the plaintiffs and you, the said Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler, are the defendants in error, to show cause, if any there be, why the judgment in said

writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota, this 2d of May, A. D. 1887.

JAMES GILFILLAN,
Chief Justice.

i [Endorsed:] 4809. Court file —. State of Minnesota. In supreme court, second judicial district. Noyes *et al.*, resp'ts, plaintiffs,, against Bruno Beaupre, app'ts, defendants. Filed May 6, 1887. J. D. Jones, clerk. Due service of the within citation admitted by receipt of a copy at St. Paul, Minnesota, this 3d day of May, 1887. James N. Granger, att'y for respondents. Warren & Lawrence, — attorneys, St. Paul, Minn.

j To the honorable the judges of the supreme court of the State of Minnesota:

The petition of Bruno Beaupre, Frank Keogh, and John F. Broderick respectfully shows that on the 29 day of April, A. D. 1887, the supreme court of the State of Minnesota, in and by the final judgment thereof entered on that day in a certain action wherein Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler were plaintiffs and your petitioners were defendants, affirmed a judgment made in that action by the district court for the county of Ramsey, in said State, in favor of said plaintiffs and against said defendants, made and entered on the 17th day of November, A. D. 1886; which judgment of said supreme court finally and conclusively adjudicates and determines that said plaintiffs are entitled to have and recover of and from your petitioners the damages and costs awarded by said judgment of said district court, namely, the sum of 3,561.27 dollars and interest from the date of said district court judgment at the rate of seven per cent. per year, and the sum of thirty-nine dollars' costs and disbursements in said supreme court of the State of Minnesota, and interest from the date of said final judgment in that court at the rate of seven per cent. per year, subject only to a review by the Supreme Court of the United States, as will more fully appear by reference to the records and proceeding in said action.

That said supreme court of the State of Minnesota is and then was the highest court in said State in which a decision in said action could be had; that your petitioners claim the right to remove said judgment to the Supreme Court of the United States by a writ of error under section 709 of the Revised Statutes of the United States, because in said action a title, right, privilege, and immunity was specially set up, pleaded, and claimed by your petitioners in
k bar of said action under the first section of the fourth article of the Constitution of the United States and under the act of Congress known as section 905 of the United States Revised Statutes—that is to say, there was pleaded and proved by your petitioners in bar of said action certain records and judicial proceedings of a certain court of record of the Territory of Montana, and your petitioners are advised and verily believe that such faith and credit

were not given to said records and judicial proceedings in and by the said judgment of the said supreme court of the State of Minnesota as said records and judicial proceedings have by law and usage in the courts of said Territory of Montana, as will more fully appear by the records and proceedings in said action, to which reference is hereby made.

Wherefore your petitioners pray the allowance of a writ of error, returnable unto the Supreme Court of the United States, for citation and supersedeas; and your petitioners will ever pray.

WARNER, STEVENS & LAWRENCE,
WARNER & LAWRENCE,
Attorneys for Petitioners.

STATE OF MINNESOTA, }
County of Ramsey. }

BRUNO BEAUPRE came before me personally and, being duly sworn, doth say that he is one of the petitioners in the above-entitled action; that the foregoing pleading is true of his own knowledge except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

BRUNO BEAUPRE.

Subscribed and sworn to before me this 29th day of April, A. D. 1887.

[NOTARIAL SEAL.] CHARLES G. LAWRENCE,
Notary Public, Minn.

k[1] Writ of error allowed as within prayed for.
April 29th, 1887.

JAMES GILFILLAN,
Chief Justice Supreme Court of Minnesota.

l UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity in which a decision could be had in said suit between Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler, as plaintiffs, and Bruno Beaupre, Frank Keogh, and John F. Broderick, as defendants, wherein is drawn in question the construction of a clause of the Constitution of the United States, and also the construction of a statute of the United States, and the decision was against the title, right, privilege, immunity, and exemption specially set up or claimed under such clause of the Constitution and under such statute, a manifest error hath happened, to the great damage of said Bruno Beaupre, Frank Keogh, and John F. Broderick, as by their petition and pleadings appear, we, being willing that the error, if any hath been, should be duly corrected and full and speedy jus-

tice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record of the proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

m Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 29th day of April, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal of the Circuit Court of U. S. for Dist. of Minn.]

OSCAR B. HILLIS,
Clerk of the Circuit Court of the United States for the District of Minnesota.

n STATE OF MINNESOTA, *ss:*

Supreme Court.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, Respondents,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Appellants.

Know all men by these presents that we, Bruno Beaupre, Frank Keogh, and John F. Broderick, as principals, and Amherst H. Wilder and Maurice Auerbach, as sureties, are held and firmly bound unto said respondents, Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler, in the full and just sum of eight thousand dollars, to be paid to said respondents, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this second day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a general term of the said supreme court of the State of Minnesota, in a suit depending in said court between said Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler, as plaintiffs and respondents, and said Bruno Beaupre, Frank Keogh, and John F. Broderick, as defendants and appellants, judgment was rendered against said defendants, and the said defendants having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said plaintiffs, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such — if the said defendants shall prosecute their said writ of error to effect and answer all damages and costs, including just damages for delay, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

BRUNO BEAUPRE. [SEAL.]
FRANK KEOGH. [SEAL.]
JOHN F. BRODERICK. [SEAL.]
AMHERST H. WILDER. [SEAL.]
MAURICE AUERBACH. [SEAL.]

In presence of—the words "and severally," "second," and "May" interlined before execution, and words "first" and "April" erased before execution—

J. P. CARRITTE.
WALTER J. TRASK.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it known that on this 2d day of May, A. D. 1887, before me, a notary public, personally appeared Bruno Beaupre, Frank Keogh, and John F. Broderick and Amherst H. Wilder and Maurice Auerbach, to me known to be the same persons described in and who executed the foregoing instrument, and each for himself acknowledged the same to be his own free act and deed.

[NOTARIAL SEAL.]

WALTER J. TRASK,
Notary Public, Ramsey Co., Minn.

1 STATE OF MINNESOTA, } ss:
County of Ramsey, }

AMHERST H. WILDER and MAURICE AUERBACH, the persons named in and who executed the foregoing bond as sureties, being first duly sworn, doth each for himself depose and say that he is a resident and freeholder of the State of Minnesota and worth the amount of sixteen thousand dollars above his debts and liabilities and exclusive of his property exempt from execution.

AMHERST H. WILDER.
MAURICE AUERBACH.

Subscribed and sworn to before me this 2d day of May, A. D. 1887.

[NOTARIAL SEAL.]

WALTER J. TRASK,
Notary Public, Ramsey Co., Minn.

I hereby approve of the foregoing bond and the sureties thereon.

JAMES GILFILLAN,
Chief Justice Supreme Court, State of Minnesota.

2 STATE OF MINNESOTA :

Supreme Court.

STATE OF MINNESOTA, } ss :
County of Ramsey, }

District Court.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, Partners as Noyes Bros. & Cutler,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN S. BRODERICK, Partners as Beaupre, Keogh & Co.

For complaint herein plaintiffs allege that during all of the times hereinafter mentioned they were and now are partners engaged in business as such, as wholesale druggists in the city of St. Paul, in said county and State, under the firm name and style of Noyes Bros. & Cutler, while defendants during all said time were and still are partners engaged in the wholesale grocery business at said city under the firm name and style of Beaupre, Keogh & Co.

Further complaining, these plaintiffs allege that on the 27th day of April, A. D. 1883, one Charles Young was engaged in the business of a general merchant at Forsyth, in the county of Custer, in the Territory of Montana, and was then and there insolvent and unable to pay his just debts and liabilities as they became due or otherwise, and was largely indebted to sundry persons and firms for merchandise purchased in the usual course of business; that said Young was then and there indebted to these plaintiffs for goods,

3 wares, and merchandise sold him by plaintiffs in the sum of more than $425.71, and to these defendants in a sum of more than $1,080.43, as well as to various other persons and firms in divers sums of money as aforesaid.

That on said 27th day of April, A. D. 1883, the said Young, being then and there insolvent as aforesaid, in good faith and not otherwise and for the purpose of applying all of his property to the payment of his said indebtedness and of having the same sold and the proceeds thereof divided equally among his creditors, share and share alike, made, executed, and delivered to one Clarence A. Winchester, of Miles City, in said Territory of Montana, his certain deed of assignment for the benefit of his creditors, in due form and in writing, wherein and whereby he duly conveyed and transferred unto the said Clarence A. Winchester, under the name of C. A. Winchester, all and singular his property, real and personal, in trust for his said creditors as aforesaid; that said Winchester accepted said trust and at once qualified as such assignee and took actual possession of all and singular said property and proceeded in due form to execute the conditions of said trust, and ever since has been and now is such assignee; that said deed of assignment was afterwards and on the 1st day of May, A. D. 1883, at 1.30 o'clock p. m., duly filed for record in the office of the county clerk in and for the

county of Custer aforesaid, and was duly recorded in Book A of Assignments, on pages 98 and 99.

That the property so conveyed by said Young and so received by said Winchester as such assignment was worth the sum of $6,000, and consisted, among other things, of a stock of goods or general merchandise, books, book accounts, &c.

That immediately said assignment had been perfected and said assignee had taken possession of said property as aforesaid the said assignee, Clarence A. Winchester, duly notified both these plaintiffs and the said defendants of the said assignment and of his acceptance of said trust, and to which said defendants duly assented.

4 That afterwards and on and between the first day of May, A. D. 1883, and the second day of January, A. D. 1884, the said Clarence A. Winchester, as such assignee and not otherwise and with the consent of all the creditors and especially the said defendants, Beaupre, Keogh & Co., carried on business at said Forsyth and purchased large amounts of goods and merchandise as such assignee and not otherwise and placed the same in the store building before occupied by said Young, at Forsyth aforesaid, as his place of business and commingled said goods so purchased with the goods and merchandise of said Young conveyed to said Winchester, as assignee as aforesaid, and continued from the date of said assignment until the second day of January, A. D. 1884, to sell both the original stock of merchandise and the goods so purchased by him and to apply all of the proceeds thereof not required to pay expenses of said assignment to the payment as far as possible of the claims of the creditors of said Young and of the indebtedness incurred by said Winchester as assignee; that said goods so purchased by said assignee were procured for the sole purpose and no other of enabling said assignee to dispose of all of the trust property to the best advantage; that the said goods so purchased by him were paid for and of the proceeds of said trust property, as well as from the proceeds of the property so purchased, and said defendants were paid and they received payment as well on account of their indebtedness against Charles Young as for the goods purchased by said assignee from them, as hereinafter set out, out of the proceeds of both said property and said merchandise so purchased; that these defendants knew of all these matters and consented thereto, and so knowing received payment on account of said original indebtedness and said indebtedness incurred by said assignee from the proceeds both of said trust property and said goods so purchased by Clarence A. Winchester.

Further complaining, these plaintiffs say that on the 2d day of

5 January, A. D. 1884, the said defendants, Beaupre, Keagh & Co., caused two certain actions to be commenced in the district court in and for the county of Custer, 1st judicial district, Territory of Montana, in one of which the said Charles Young was made defendant and in the other of which said Charles Young and said Clarence A. Winchester personally were made defendants; that the first of said actions was brought to recover the sum of $683.71, being the balance due or claimed by them to be due upon

the original indebtedness owing by said Charles Young to them, as aforesaid; that the second action was brought to recover the sum of $931.44, the balance due or claimed to be due from said Charles Young and Clarence A. Winchester for merchandise sold and delivered to said Young and Winchester by said defendants between the date of said assignment and the date of the commencement of said action; that a summons in due form was in each of said cases duly issued and served upon each and all said defendants; that at the same time said action was commenced writs of attachment were in each of said cases duly issued out of said court last mentioned, addressed to the sheriff of the county of Custer aforesaid, commanding and directing him in the one case to seize and attach and safely keep all of the property of said Charles Young within said Custer county, or so much thereof as might be necessary to pay the said amount of $683.71 and costs, and in the other case to seize and attach and safely keep all of the property of said Clarence A. Winchester and Charles Young within said county of Custer, or sufficient of the same to pay the said amount of $931.44 and costs; that under and by virtue of said writs J. W. Johnson, who was then and there the sheriff of Custer county, duly elected, qualified, and acting as such, acting under the orders and directions of these defendants, Beaupre, Keogh & Co., and not otherwise, did, on or about the said second day of January, A. D. 1884, as such sheriff, wrongfully and unlawfully seize and take possession of all of the stock of merchandise, books, books of accounts, notes, choses in action, and other property belonging to the said Clarence A. Winchester
6 as such assignee and then in his possession as such assignee, at said Forsyth, which property was then and there of the value and worth the sum of $6,000; that said property so seized consisted as well of part of the original trust property as of the property purchased with the proceeds of said trust property with the consent and permission of these defendants.

That afterwards and on the 15th day of January, A. D. 1884, these plaintiffs, for a valuable consideration by them actually paid unto said Clarence A. Winchester, as such assignee, and at Miles City aforesaid, purchased and said Winchester, as such assignee, did sell and did execute a conveyance in writing and in due form unto these plaintiffs of all of said property so seized by said sheriff as aforesaid under said writ of attachment, and all of the right, title, and interest of said Winchester, as such assignee, in and to the same; that said writing conveying said property was in all respects duly executed, and on the 15th day of January, A. D. 1884, at 12 o'clock noon, duly filed in the office of the recorder of said Custer county, and was duly recorded in Book "A" of Agreements, at pages 133 and 134; that these plaintiffs ever since have been and now are the owners of said goods and property and all of the same, and entitled to the immediate possession of all of the same.

That said property was so purchased by said plaintiffs for the sole purpose and no other of preserving the same from sacrifice by sale under the proper writs to be issued in said actions, and to enable the same and all of the same to be applied by these plaintiffs to the

purposes and objects of said trust, and in trust not only for themselves, but for all the other creditors of said Young and C. A. Winchester as assignee or either, share and share alike.

That on the said 15th day of January, A. D. 1884, these plaintiffs duly demanded in writing of said sheriff that he forthwith deliver unto them all and singular the said property so attached;
7 that he wrongfully and unlawfully neglected and refused and still wrongfully and unlawfully neglects and refuses so to do at the instigation and under the direction and order of the said defendants, Beaupre, Keogh & Co., and not otherwise.

That afterwards and on the 31st day of January, A. D. 1884, these plaintiffs duly served upon these defendants personally, at the said city of St. Paul, a written demand requiring and demanding them to at once and forthwith surrender and deliver to them all and singular the said property so seized by said sheriff under their direction and order, and did personally demand of said Beaupre, Keogh & Co. the delivery of the same and all of the same, but said Beaupre, Keogh & Co. have neglected and refused and still neglect and refuse to do so, and have wrongfully and unlawfully converted all of said property to their own use and benefit, to plaintiffs' damage in the premises in the sum of $6,000.

That the total value of the merchandise sold and delivered by the defendants to the said Winchester as assignee as aforesaid is about the sum of $2,675, on which said Winchester had paid as assignee prior to the commencement of said actions and out of the proceeds of said property and with the knowledge and consent of said Beaupre, Keogh & Co. about the sum of $1,743.36.

Wherefore these plaintiffs demand judgment against defendants and each of them for their costs and disbursements herein and for the sum of six thousand dollars ($6,000), the value of said property, and interest thereon from the 31st day of January, A. D. 1884, together with the sum of $1,500 damages in the premises.

JAMES N. GRANGER,
Plaintiffs' Attorney, St. Paul, Minn.

C. K. DAVIS, *Of Counsel.*

STATE of MINNESOTA, } ss:
County of Ramsey, }

CHAS. P. NOYES came before me personally, and, being
8 duly sworn, saith that he is one of the plaintiffs in the above-entitled action; that the foregoing complaint is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

CHAS. P. NOYES.

Subscribed and sworn to before me on this the 14th day of April, A. D. 1884.

SAM'L E. HALL,
Notary Public, Minn.

[SEAL.]

STATE OF MINNESOTA, }
County of Ramsey. }

District Court, Second Judicial District.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER }
vs.
BRUNO PEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK. }

In answer to the complaint in the above-entitled action said defendants deny each and every allegation thereof, whether as therein stated or otherwise, except as hereinafter stated, admitted, qualified, or otherwise specifically denied, and thereupon they allege as follows: Said plaintiffs are and have been copartners engaged in trade, as stated in said complaint.

Said defendants are and have been copartners engaged in trade, as stated in said complaint. The Charles Young mentioned in said complaint was, on the 27th day of April, A. D. 1883, and for some time before that, engaged in trade as a retail merchant at Forsyth, in the Territory of Montana, and as such had then and there a stock of goods, other property and credits, and owed debts, and among them one to said defendants in amount $1,080.43 and one to said plaintiffs, but as to the amount thereof said defendants deny any knowledge or information sufficient to form a belief.

9 In the fore part of May, 1883, said defendants, in St. Paul, in the State of Minnesota, received by mail a letter from said Young and one from *the* Clarence A. Winchester, in which letters they severally represented to said defendants to the effect that said Young had become insolvent, and that he had shortly before that made a general assignment to said Winchester in trust for the benefit of the creditors of said Young without preferences, and that said Winchester had accepted such trust and had already taken possession of the estate and was then actually engaged in carrying out such a trust.

Said defendants then and there relied on said representations, and until about the close of the year of 1883 supposed and believed the same to be true. Soon after the receipt of said first-mentioned letters said defendants received by mail from said Forsyth letters, purporting to be signed by said Winchester, ordering a few goods from said defendants, and said defendants shipped and sent them to said Winchester at said Forsyth, and charged them to him at current prices, on account current, and they so did under the *bona fide* supposition on their part that they were ordered and so procured merely to facilitate the disposal by said Winchester of goods acquired by him under said alleged assignment. The dealing upon said account current so began thereafter ran on until the 19th day of November, A. D. 1883, when the same ceased, and meanwhile said defendants received, as they supposed and believed, from said Winchester divers payments to apply on said account current against said Winchester, so that at said last-mentioned date there was a balance due on said last-mentioned account in the sum of $931.44. With regard to the allegation of said complaint to the effect that said defendants furnished said

goods under or pursuant to a general agreement or understanding on the part of creditors of said Young that said Winchester should continue said business, said defendants deny that any such agreement or arrangement ever existed, and deny that said
10 goods were furnished by them otherwise than under the circumstances above stated. In December, 1883, owing to the fact that nothing had ever been paid by said Winchester upon the debt of said Young to said defendants which subsisted prior to May, 1883, and to the character of said new account, said defendants became suspicious that said first representations made by said Young and Winchester as aforesaid were false.

And that either no assignment had ever been made or, if made, that none was ever being carried out, and under such suspicion sent copies of their said account against said Young and of their said account against Winchester to their attorneys, Messrs. Strivell & Garlock, at Miles City, in said Territory, for them to investigate what had been and was being done and to take such action thereon as they thought proper. Said attorneys thereupon did investigate the doings of said Young and Winchester and found the facts to be and they were as follows, and not further or otherwise—that is to say: At the dates mentioned in said complaint an assignment of the tenor pleaded in said complaint had been made and recorded in the office for the registration of conveyances at said Miles City. The store and business which had theretofore been conducted by said Young had thereafter been conducted by him the same after as before said pretended assignment. Said Winchester denied that he had purchased or obtained any goods from said defendants, and claimed that he had been merely clerking for and in the employ of said Young at wages. Said Young had never surrendered or delivered said store or its contents or said business to said Winchester, but had retained possession, control, and management of the same himself down to the time of said investigation, in December, 1883. Said Young and Winchester had never intended to carry out said assignment, and they had always treated and regarded it as sham and a device to prevent creditors of said Young from collecting their demands out of said property by legal process. Said
11 Young's plan, intent, design, and purpose in making said pretended assignment was then and there and at all times had been thereafter to prosecute his said business as usual, and out of the proceeds of it to pay such of his creditors as he wanted to be paid and to delay and defraud the rest of them, including said defendants, and accordingly he had so continued his said business, and had out of its proceeds and out of said property paid in full some of his creditors, whom he was owing when said pretended assignment was made, and to do so had obtained new goods on credit, sometimes in his own name and sometimes in the name of said Winchester, and had disposed of them and used the proceeds to carry out his said original fraudulent design.

During the year 1883 and ever since the following laws have been and are still in force in said Territory—that is to say, chapter 13 of the General Laws of Montana, section 165: "All deeds of gift,

all conveyances, and transfers or assignments, verbal or written, of goods, chattels, or things in action made in trust for the use of the person making the same shall be void as against the creditors existing or subsequent of such person." Section 169: "Every sale made by a vendor of goods and chattels in his possession and under his control, and every assignment of goods and chattels, unless the same be accompanied by the immediate delivery and be followed by an actual and continued change of possession of the things sold or assigned, shall be conclusive evidence of fraud as against the creditors of the vendor or the person making such assignment or subsequent purchasers in good faith." Section 170: "The term creditors as used in the last section shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control." Section 172; "Every assignment, in writing or otherwise, of any estate or interest in goods in action made with intent to hinder, delay, or defraud creditors of their lawful suits, debts, or demands as against the person hindered, delayed, or defrauded shall be void."

12 Under said circumstances and laws the two actions mentioned in said complaint were duly commenced and the writs of attachments referred to in said complaint were duly issued out of the court in said complaint mentioned to the sheriff of said Custer county, and under and in virtue thereof said sheriff duly and rightfully attached only the stock in trade then in said store at said Forsyth, which was then and there and so had been in the possession, management, and control of said Young as aforesaid, and in such two actions the original process of summons was duly and personally served upon the defendants therein respectively, and said court duly obtained and had jurisdiction over each and both of them in that behalf.

The value of the property so attached did not at that time exceed the sum of $1,500, and did not include any books, accounts, or demands, but did include merely said merchandise, most of which then and there had been fraudulently obtained from said defendants by said Young in the name of said Winchester as aforesaid, and which remained unpaid for then and there as aforesaid.

Shortly thereafter and on the 15th day of January, A. D. 1884, said plaintiffs, acting by and through their attorney, J. N. Granger, wrongfully and fraudulently procured from said Winchester the pretended assignment pleaded in said complaint, and of which a true copy is hereto attached and marked Exhibit A and so made a part of this answer. Nothing was paid or promised to be paid by said plaintiffs to said Winchester for pretended assignment, and the same was without consideration. The sole object, design, intent, and purpose thereof was to enable said plaintiffs to commence and maintain this action.

At that time said Young delivered to said Granger for said plaintiffs nothing but said pretended assignment, his books of account, and notes, and out of the demands therein recorded and said notes they have collected and realized more than $500, to the best of said

defendants' information and belief; so that they have not
13 now and had not when this action was commenced or at any time since any claim against said Young or under said pretended assignment. The motive and action of said Young and Winchester in making said pretended transfer to said plaintiffs was merely to further wrong, cheat, and defraud said defendants, to all of which said plaintiffs, Young and Winchester, were then and there consenting, knowing, and privy. In procuring said pretended transfer to them said plaintiffs acted with full notice and knowledge of all the facts hereinbefore pleaded and in bad faith. In pursuance of said fraudulent scheme the demands upon said sheriff and upon said plaintiffs pleaded in said complaint were made at the times therein alleged, and neither of them were complied with.

During the year 1883 and ever since there has been in force in said Territory of Montana the following law, to wit, chapter 4, section 191: "If any personal property attached be claimed under oath by a third party as his property the sheriff shall deliver the property to such third party within five days if the plaintiff resides within the county; otherwise ten days after notice to plaintiff's attorney, unless that plaintiff give to the sheriff good and sufficient bond to indemnify him against loss or damage by reason of holding such property."

Said sheriff levied upon said property in good faith, and thereby acquired a lien thereon for his legal fees in that behalf, and nobody ever claimed said property under oath according to said statute.

At or about the time when said demands were made as aforesaid the said attorneys of said defendants reported to said defendants the facts concerning said two actions, and also to the effect that said assignment was sham and fraudulent, but said defendants had no knowledge or information personally touching the details thereof before mentioned or touching the precise grounds of said proceedings so taken for them by their said attorneys until after the commencement of this action, and in ignoring said plaintiffs' said demand they acted in good faith and in reliance upon the advice of their said attorneys.

14 In said action against said Young he, at said plaintiffs' instance, fraudulently interposed a frivolous demurrer to the complaint, and at the next ensuing term of said Montana court the same was struck out, and on the 10th day of May, A. D. 1884, final judgment was duly rendered and entered in and by that court in favor of said defendants against said Young for the sum of $754.93 debt and $270 costs and disbursements of that action, and in all for the sum of $1,024.93.

In said action against said Young and Winchester said Winchester interposed an answer that he never purchased or obtained any goods or property from said defendants. Afterwards and on the 29th day of November, A. D. 1884, by and with the consent of said Winchester and said Young and on due proof of said facts, final judgment was duly rendered and entered in and by said Montana court in favor of said defendants and against said Winchester for

the sum of $1,026.90 debt and $968.45 costs and disbursements, and in all for the sum of $1,995.35.

Upon said two judgments executions were duly issued out of said Montana court to said sheriff, in virtue whereof, on the 24th day of December, A. D. 1884, the personal property originally levied upon by said sheriff under said two attachments, and which had remained thereafter in the custody of said sheriff under said attachments meanwhile, was duly sold at Forsyth by said sheriff at public auction for the aggregate sum of $676.90, which was the full value thereof at that time.

Said two attachments and said levies thereof were never vacated, and the same remained in full force and virtue until said sale was made of said property as aforesaid. Neither said Young nor said Winchester nor said plaintiffs nor any one else ever interposed any objections thereto, in said Montana court or elsewhere, further or otherwise than to make said two demands and to bring this present action, and in virtue of the facts herein pleaded said Young, said Winchester, and said plaintiffs are estopped to question or complain thereof.

15 Throughout said matters, transactions, and proceedings said defendants have acted in good faith and not otherwise.

Each and all said representations made by said Young and by said Winchester were in point of fact false when made, except as aforesaid, and the same were made by them respectively with intent to mislead and deceive said defendants, and all their said acts and doings done thereafter, in the year 1883 as aforesaid, until they sent their said claims to their said attorneys as aforesaid, were by them done in reliance on said representations and under the belief that they were true, and they would not have done any of said acts if they had known what the facts really were as aforesaid and if they had not been deceived thereby as aforesaid.

Second defense.

And for their further and second defense to this action said defendants here replead all the denials and also all the facts, matters, and things hereinbefore in their first defense herein once pleaded, and hereby so make the allegations of their said first defense a part of this their second defense, and further allege as follows:

To the pretended assignment for benefit of creditors mentioned in said complaint was annexed a schedule, of which a true copy is hereto attached and marked Exhibit B and so made a part hereof. Said schedule was in and by the terms of said assignment made part thereof as a schedule of all the creditors of said Young. The following-named parties, referred to in said schedule, are alive and now are and ever since the year 1882 have been within the jurisdiction of this court, as said plaintiffs have meanwhile well known, to wit: Cynthia Bohrer and John H. Hullsiek, copartners as Bohrer & Hullsiek; the North Star Boot and Shoe Company, a corporation duly created, organized, and subsisting under and in virtue of the

laws of the State of Minnesota; William Lindeke, Albert H.
16 Lindeke, Reuben Warner, and Theodore L. Schurmeier, copartners as Lindekes, Warner & Schurmeier; Thomas B. Campbell and Henry C. Burbank, copartners as Campbell & Burbank; Conrad Gotzian and George W. Freeman, copartners as C. Gotzian & Co., and J. H. Schurmeier. All said parties are necessary parties to this action and should be joined therein as plaintiffs or defendants to the end that litigation may have an end.

Wherefore said defendants demand relief as follows: That said defendants be adjudged to go hence without day, and that they do have and recover of and from said plaintiffs their costs and disbursements in this behalf, and that in case said defendants are not entitled to said relief, then an account be taken of all the property levied upon as aforesaid, and of the value thereof, and of all property turned over to said plaintiffs by said Winchester as aforesaid, and of the value thereof, and that a receiver be appointed in this action with power to take and receive all of said property on hand, and the said value of whatever thereof has been disposed of as aforesaid, and that an account be taken of all demands against said Young subsisting when said pretended assignment was made as well as of said defendants' said demand and of all other demands, if any, which have accrued thereafter on account of goods furnished for said business since said pretended assignment, and that all said property be converted into money and be applied, first, to the payment of the demands last mentioned, and, secondly, to the demands against said Young which subsisted before said pretended assignment, and that such further and other relief be granted herein as may be just.

WARNER & STEVENS,
WARNER, STEVENS & LAWRENCE,
Defendants' Attorneys, St. Paul, Minn.

17 EXHIBIT A.

Know all men by these presents that I, Clarence A. Winchester, of Miles City, in the county of Custer and Territory of Montana, as assignee of Charles Young, insolvent, of said county, for and in consideration of a large and proper sum of money to me in hand well and truly paid by Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler, partners as Noyes Brothers & Cutler, all of St. Paul, Minnesota, the receipt of which is hereby acknowledged, have sold, bargained, and conveyed, and by these presents do sell, bargain, and convey, unto the said Noyes Bros. & Cutler all and singular the personal property of every nature, description, and kind now belonging to me as such assignee and within said Territory, which property consists, among other things, of the stock in trade in the store building at Forsyth, in said county, lately occupied and used by said Young as a merchant and afterwards occupied by me as assignee aforesaid, and including not only such of the trust property as was by the certain deed of assignment of said Young to me as assignee conveyed to me and is now in said store or in any way belonging to me, *and* also all other property which I have acquired as such

assignee either from and with the proceeds of the sale of any of the trust property aforesaid or otherwise; also all the books, bank accounts, notes belonging to me as such assignee, and the money due thereon or to become due; also two (2) horses, one (1) buckboard wagon, all the counters, shelving, stoves, chairs, furniture of every kind and description, and all other and singular the personal property now belonging to me as such assignee.

Granting unto said Noyes Bros. & Cutler, their heirs, executors, administrators, or assigns, the said property and all of the same forever.

In testimony whereof I have, at Miles City, in the said county of Custer, on this the 15th day of January, hereunto set my hand and affixed my seal.

CLARENCE A. WINCHESTER, [SEAL.]
Assignee of Chas. Young.

18 In presence of—
J. N. GRANGER.
W. C. STOEBLE.

EXHIBIT B.

"Schedule B."—The following is a full and true inventory of all of my debts of every kind and character, so far as I am able to ascertain the same:

Noyes Bros. & Cutler, St. Paul	$425 71
Bohrer & Hullsick, St. Paul	1,079 47
North Star B. & S. Co., Minn.	116 35
Sig. Hanauer, Bismarck	3,371 83
Lindekes, Warner & Schurmeier	309 46
Campbell & Burbank	151 75
C. Gotzian & Co.	150 00
A. H. Linburg & Conaklen	75 00
American News Co.	30 00
J. H. Schurmeier	55 00
Beaupre, Keogh & Co., St. Paul	1,080 43
C. B. Towers, Miles City	30 00
Leighton, Jordan & Co., Miles City	25 00
W. E. Savage & Co., Miles City	10 40
A. J. Young, Mich.	600 00
Bismarck Tribune	16 92
George Hibbard, Billings	20 00
Billings Herald	20 00
Charles Anderson	30 00
McMillan, Miles City	6 00

STATE OF MINNESOTA, }
County of Ramsey, } *ss:*

JOHN F. BRODERICK came before me personally and, being duly sworn, doth say that he is one of the *plaintiffs* in the above-entitled

action; that the foregoing pleading is true to his own knowledge except as to the matters which are herein stated on his information and belief, and as to those matters that he believes it to be true.

19

JOHN F. BRODERICK.

Subscribed and sworn to before me on this 13th day of January, A. D. 1885.

[SEAL.] CHARLES G. LAWRENCE,
Notary Public, Minn.

Due service of the within answer admitted this 13th day of January, 1885.

JAMES N. GRANGER,
Plaintiffs' Attorney.

STATE OF MINNESOTA, *County of Ramsey,* } ss:

In District Court.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK.

And now come the plaintiffs and, for this their reply to the answer of defendants herein, deny each and every allegation, matter, and thing in said answer alleged and set out, save as in the complaint herein or in this reply expressly allowed, admitted, or qualified. The plaintiffs admit that at the time when the assignment for the benefit of creditors was made by Charles Young to Clarence A. Winchester, as alleged in the complaint and answer herein, the said Young was indebted to these defendants in a large sum of money, to wit, in the sum of $1,083.43, but they expressly deny that prior to the month of December, A. D. 1883, and after the making of said assignment the said Winchester, as assignee of said Young, never paid these defendants any money to apply on said account, but alleged that after the 27th day of April, A. D. 1883, and prior to December, 1883, as set out in folio 6 of said answer, the said

20

Winchester, as such assignee, did pay to these defendants large sums of money, the exact amount of which is to plaintiffs unknown, for and on account of said indebtedness of $1,080.43 owing from said Young to these defendants.

Plaintiffs deny each and every allegation set out and alleged in folios 7, 8, and 9 of said answer and allege the true facts to be that the assignment for the benefit of creditors mentioned in the complaint herein was duly made and executed by said Young to said Winchester upon the 27th day of April, A. D. 1883, according to the forms and rules of the English common law regarding such assignment, which was then in force in the Territory of Montana, as set out in chapter 10 of the fifth division of the Revised Statutes of said Territory in words and figures as follows:

CHAPTER X.—*Common Law.*

"SEC. 144. That the common law of England, so far as the same is applicable and of a general nature and not in conflict with the special enactments of this Territory, shall be the law and the rule of decision and shall be considered as of full force until repealed by legislative authority."

That no other statute or law exists in said Territory than the above regarding assignments for benefit of creditors or deed of trust and the same and no part thereof has ever been repealed.

That on the 1st day of May, A. D. 1883, and ever since, the following general laws have been and still are in force in said Territory—that is to say, chapter 16, article 4, section 389, of the fifth division of the Revised Statutes of Montana, viz:

"The county clerk shall be *ex officio* recorder of deeds and shall have custody of and shall safely keep and preserve all the books, records, deeds, maps, and papers deposited or kept in his office, and shall also record all deeds, mortgages, maps, instruments,
21 and writing authorized by law to be recorded in his office and left with him for that purpose, and shall perform all other duties required of him by law."

Also sec. 391, same article, viz: "Whenever any instrument has been received by him for record he shall immediately indorse upon such instrument his certificate, noting the day, hour, and minute of its reception, the volume and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of the filing of the same. Whenever any instrument has been filed as aforesaid the recorder shall immediately make an entry of the same in his receiving book under the appropriate heading, with the amount paid as fees for recording the same, and after such instrument has been recorded he shall deliver it to the person authorized to receive it, writing the name of the person to whom it was delivered in the appropriate column."

That on the 1st day of May, A. D. 1883, the following general laws were, ever since have been, and still are in force in said Territory, to wit, an act entitled "An act concerning chattel mortgages," approved February 19th, 1881, in words and figures as follows, viz:

"SECTION 1. No mortgage of goods, chattels, or personal property shall be valid as against the rights and interests of any other person than the parties thereto, unless the possession of such goods, chattels, and personal property be delivered to and retained by the mortgagee, or the mortgage provide that the property may remain in the possession of the mortgagor and be accompanied by an affidavit of all the parties thereto or, in case any party is absent, an affidavit of those present and of the agent or attorney of such absent party that the same is made in good faith to secure the amount named there and without any design to hinder or delay the creditors of the mortgagor and be acknowledged and filed as hereinafter provided.

22 "SEC. 2. Every mortgage of goods, chattels, or personal property shall be acknowledged by the mortgagor or persons

executing the same in the manner provided for the acknowledgment of conveyances of real property before some officer authorized by law to take acknowledgments of deeds.

"SEC. 3. Every mortgage of goods, chattels, or personal property, together with the affidavits of the parties thereto, or a true copy thereof, certified to be correct by the recorder or person before whom the acknowledgment has been taken, shall be filed in the office of the recorder of deeds of the county where the mortgagor resides, or in case he is not a resident of this Territory, then in the office of the recorder of deeds of the county where the goods, chattels, or personal property may be at the time of the execution of the mortgage, and such recorder of deeds shall, on receipt of such mortgage or copy, endorse thereon the time of receiving the same and file and keep the same in his office for the inspection of all persons, and shall enter in a book properly ruled and kept for that purpose the names of all the parties, the names of the mortgagors to be alphabetically arranged, the date of such mortgage, the consideration thereof, the date of its maturity, and the time of filing the same.

"SEC. 4. Any mortgage of goods, chattels, or personal property acknowledged and filed as hereinbefore provided shall thereupon, if made in good faith, be good and valid as against the creditors of the mortgagor and subsequent purchasers and mortgagees from the time it is so filed until the maturity of the entire debt or obligation for the security of which the same is given and for a period of 20 days thereafter, provided said time shall not exceed one year.

"SEC. 5. Personal property mortgaged may be taken on attachment or execution issued at the suit of a creditor of the mortgagor, but before the property is so taken the officer must pay or
23 tender to the mortgagee the amount of the mortgage debt and interest or must deposit the amount thereof with the county treasurer of the county wherein the mortgaged property is found payable to the order of the mortgagee.

"SEC. 6. For his services, as provided in section three of this act, the recorder shall be entitled to receive the sum of one dollar for each mortgage of personal property filed in his office.

"SEC. 7. A copy of any mortgage of goods, chattels, or personal property made, acknowledged, and filed as provided in this act, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court in this Territory without further proof of the execution of the original if said original be lost or out of the power of the person wishing to use it.

"SEC. 8. The provisions of the foregoing sections of this act shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property as shall have the effect of a mortgage or lien upon such property."

That the store and business of said Young at said Forsyth was not, at any time after the making of said assignment, conducted by said Young, but was conducted only by said Winchester as the assignee of said Young and not otherwise; that said Winchester did not deny at any time to said Strovell & Garlock or to any one else that he had ever bought or obtained any goods from these defend-

ants as assignee, but only personally, and alleges that Winchester always admitted and claimed that he had purchased goods as assignee and not otherwise; that said Winchester never claimed to any one that he was, nor was he after said assignment was made, merely a clerk for and in the employ of Young for wages or otherwise; but they allege that, on the contrary, said Winchester was and he always claimed to be acting solely and only as such assignee.

Plaintiffs aver that said Young did surrender and deliver said
24 store and all the contents and business to said Winchester in good faith, and not otherwise, as soon as said assignment was made, and did not retain or retake or in any manner have the control, possession, or management of the same down to the month of December, A. D. 1883, or at any time after said assignment was made as aforesaid, but that the control, possession, and management of the same was from the 27th day of April, A. D. 1883, until the 2d day of January, A. D. 1884, wholly, actually, and solely in said Winchester as such assignee, as the defendants herein always well knew; that both said Young and Winchester intended and it was their intent to and they always did carry out said assignment in good faith only and for the benefit of all the creditors of said Young, including these defendants, and not otherwise. They allege that said Young paid nothing to his creditors after the 27th day of April, A. D. 1883, either out of the property or proceeds thereof assigned to said Winchester or otherwise. They allege that said Young, after said last-mentioned date, obtained no new goods, on credit or otherwise, either in his own name or that of said Winchester, and disposed of no goods whatsoever after said date, either as alleged in said answer or otherwise.

Plaintiffs allege that for some time after said assignment said Young was employed by said Winchester, as such assignee, as a clerk in said store at Forsyth, but that for most of the time between the 27th day of April, A. D. 1883, and the 2d day of January, A. D. 1884, said Young was engaged in business at a point several hundred miles distant from said Forsyth, and was for all of said time absent from said Forsyth.

That plaintiffs have had no knowledge or information sufficient to form a belief as to the truth of any of the allegations alleged in the first nine lines of folio 17 of said answer, and therefore deny the same.

Plaintiffs expressly deny that said Young, either at the in-
25 stance of plaintiffs or any person acting in their behalf, either fraudulently or otherwise interposed a frivolous demurrer to the complaint of defendants in the action brought by them against said Young, as set out in the complaint and answer herein. They admit that a demurrer was interposed by said Young to said complaint, but allege the same was done without the knowledge or instance of these plaintiffs or any agent or attorney of theirs and before these plaintiffs were even aware that these defendants had brought suit against said Young on said alleged indebtedness. Plaintiffs admit that said demurrer was overruled by said Montana court and judgment was entered therein in favor of said defendants as plain-

tiffs and against said Young as defendant, but allege that they have no knowledge or information sufficient to form a belief as to whether the same was entered for the amount alleged in said answer on folio 18, and therefore deny the same.

Plaintiffs admit that in the action brought by the defendants herein in the Montana court against said Young and Winchester, as set out in the complaint and answer herein, the said Winchester did interpose an answer to the complaint therein, but as to whether said Winchester in said answer alleged that he had never purchased or obtained any goods or property from said defendants or as to what he alleged therein these plaintiffs have no knowledge or information sufficient to form a belief, and therefore deny the same. They admit that afterwards said answer was withdrawn by said Winchester, but alleged that said Winchester so withdrew said answer and permitted said Beaupre, Keogh & Co. to take judgment, not because said answer was untrue, but because said Beaupre, Keogh & Co. caused the homestead of said Winchester, in Custer county, Montana, to be attached in said action, and threatened said Winchester that if he did not withdraw said answer they could and would sell said homestead on execution; whereupon said Winchester,
26 misled by the said misrepresentations of said Beaupre, Keogh & Co., which were fraudulent and not otherwise, and fearing he would lose his said homestead, and without consulting his attorney, consented to withdraw his answer; that said homestead was a tract of land not exceeding in quantity one-fourth of an acre, and was without the town plat and village of Miles City, Montana, and has never at any time exceeded in value the sum of $2,500; that said Winchester is and for more than two years last past has been a resident of said Territory and a married man and head of a family.

Plaintiffs allege that the said attachment was caused to be issued and levied upon said homestead by defendants oppressively and with intent to vex and harass said Winchester by litigation and thereby to compel him to withdraw his said answer and to suffer judgment to be taken against him in said action, in which design defendants succeeded; that by the laws and statutes of said Montana said homestead was exempted from attachment and sale on execution; that for more than two years last past there has been and still is in force in said Montana the following general laws, being secs. 311 and 317, of chapter 1, title 9, of the first division of the Revised Statutes of Montana, which is in words as follows, viz:

"SEC. 311. A homestead consisting of any quantity of land, not exceeding one hundred and sixty acres, used for agricultural purposes and the dwelling-house thereon and its appurtenances, to be selected by the owner thereof and not included in any town plat, city, or village, or instead thereof, at the option of the owner, a quantity of land, not exceeding in amount one-fourth of an acre, being within a town plat, city, or village and the dwelling-house thereon and its appurtenances owned and occupied by any resident of this Territory, shall not be subject to forced sale or any other

final process from a court: Provided such homestead shall not exceed in value the sum of two thousand five hundred dollars.

"SEC. 317. If the owner of a homestead may remove
27 therefrom or sell and convey the same such removal or sale or conveyance shall not render such homestead subject or liable to forced sale on execution or other final process issued against such owner, nor shall any judgment or decree of a court be a lien on such homestead for any purpose whatever: Provided, that this act shall not be construed as to in any matter relate to judgments or decrees rendered on the foreclosure of mortgages, either equitable or legal."

That said Winchester duly served a notice in writing upon said sheriff, claiming said homestead as exempt, and also duly filed said notice with the county clerk of said Custer county.

That as to whether the amount of the judgment against said Winchester in said Montana court was the amount set out in folio 19 of said answer plaintiffs have no knowledge or information sufficient to form a belief, and therefore deny the same.

Plaintiffs admit that the attached property at Forsyth was sold by the sheriff of Custer county, Montana, as alleged in folio 19 of defendants' answer, but they expressly deny the sum of $675.90 was the full value thereof. They allege that the property attached by said sheriff had been greatly damaged and deteriorated in value while in his hands and some of it had disappeared, but the property so sold was worth at the time of said sale at least the sum of $4,000.

Plaintiffs deny that defendants always or ever acted in good faith and not otherwise, as alleged in the last two lines of folio 20 in the answer herein, but allege that defendants acted throughout said matter in bad faith towards the other creditors of said Young, and especially these plaintiffs, and for the sole purpose and not otherwise of preferring themselves over the other creditors of said Young and defrauding these plaintiffs and the other creditors of said Young out of the dividends from the said proceeds of the sale of the said property.

Plaintiffs deny each and every one of the allegations con-
28 tained in folio 21 of defendants' answer herein, and allege that all the statements ever made by either said Young and Winchester to defendants' attorneys or any one else about said assignment and matters growing out of it were true and were made with the intent to truthfully inform defendants of the exact condition of said matters.

Plaintiffs deny that at the time said writs of attachment were levied, as alleged in folio 12 of answer, the stock in trade in said store and said store or either was in the possession, management, or control of said Young, but allege that the same was then in the sole possession, management, and control of said Winchester as such assignee, and not otherwise.

They deny that the value of the property so attached was of the sum of $1,500 only, but allege that it was of the value set out in the

complaint herein. They deny that said sheriff did not attach any books, accounts, or demands, but allege that he did attach the books, accounts, and demands of said assignee, and took and retained the same and all of the same in his possession under said attachment. They deny that the property or any of it so attached had been fraudulently obtained from said defendants by said Young in the name of said Winchester or otherwise, but allege that all of the property so attached which had been obtained from said defendants after the 27th day of April, A. D. 1883, had been obtained and bought of said defendants in good faith and not otherwise, and by said Winchester as assignee, upon credit of such assignee, and was so sold to him by said defendants on his credit and not otherwise.

Plaintiffs expressly deny all the allegations set out in the last three lines of folio 13 and all of folios 14 and 15 of defendants' answer herein. They allege that they never have seen or had any of the books of accounts and notes or either of said Young and Winchester, assignee, or either of them, nor have they any idea where the same are. They allege that they have never collected or realized
29 anything whatever from any of the property purchased by them from said Winchester as such assignee either through the collection or sale of the books or accounts or notes, or otherwise, and that no part of their claim has ever been paid. They allege that the said Young had nothing to do whatever regarding the purchase by plaintiffs from said Winchester as assignee of the property mentioned in said bill of sale or assignment to plaintiffs or of the making of said transfer and bill of sale, nor was he ever consulted about the same in any manner or knew of the sale until the same was completed; that the sole motive of said Winchester in making said transfer to plaintiffs was to realize the most possible money out of said property under the circumstances for the benefit of the creditors of said Young and not otherwise; that plaintiffs acted in the premises in good faith and not otherwise, and without knowledge or information as to anything which had been represented to defendants by any one in the premises.

They deny that the sole object, design, intent, or purpose of plaintiffs in purchasing said property from said Winchester as assignee, and as pleaded in said complaint and answer, was to enable plaintiffs to commence and maintain this action, but allege that they bought the said property in good faith to preserve the same and all of the same from sacrifice by sale under the proper writs to be issued in said two actions and to enable the same and all of the same to be applied by these plaintiffs, if they should so elect, and not otherwise, to the purposes and objects of said trust, and in trust not only for themselves but for some or all of the creditors of said Young, if they should so elect, and not otherwise, share and share alike; that to fully carry out said purpose the plaintiffs filed said conveyance in writing, as in the complaint herein set forth and as they were required to do by the laws of said Montana then in force and which have been heretofore pleaded, to wit, secs. 389 and 391, chapter 16, article 4, of the 5th division of the Revised Statutes

30 of Montana; also an act entitled "An act concerning chattel mortgages," approved February 9, 1881.

That it was the intention of said Winchester, as assignee, and these plaintiffs when said bill of sale or transfer was made that plaintiffs should have, take, and keep immediate possession and control of all and singular the property so sold and transferred, and plaintiffs endeavored by all means in their power at once so to do, but failed by reasons as pleaded by them in this action and not otherwise.

And further replying, and as to the second defense of said defendants as set out in their answer herein, plaintiffs admit that the persons, copartners, and corporations set out and named in folios 23 and 24 of said answer are within the jurisdiction of this court, but they deny that any or all of said persons, copartners, or corporations are necessary parties to this action and should be joined herein as plaintiffs or defendants to the end that litigation may have an end or otherwise, but allege that the only parties proper to be plaintiffs in this action are the persons who are named herein as plaintiffs, to wit: Daniel R. Noyes, Chas. P. Noyes, and Edward Cutler, and the only parties necessary or proper to be made defendants in this action are the persons who are named herein as defendants, to wit, Bruno Beaupre, Frank Keogh, and John S. Broderick.

Wherefore plaintiffs ask judgment as in complaint herein prayed.

JAMES N. GRANGER,
Plaintiffs' Attorney, St. Paul, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

EDW. H. CUTLER came before me personally, and, being duly sworn, doth say that he is one plaintiff in the above-entitled action; that the foregoing reply is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

EDW. H. CUTLER.

31 Subscribed and sworn to before me this 12th day of February, A. D. 1885.

JAMES N. GRANGER,
[NOTARIAL SEAL.] *Notary Public, Minn.*

Due service by copy of within reply admitted February 12, 1885.

WARNER, STEVENS & LAWRENCE,
Defendants' Attorneys.
JAMES N. GRANGER, *Plaintiffs' Attorney.*

Filed June 24, 1885.

R. W. BELL, *Clerk.*

STATE OF MINNESOTA, }
County of Ramsey, }

District Court, Second Judicial District.

NOYES BROTHERS & CUTLER }
vs.
BEAUPRE, KEOGH & CO. }

This case came on for trial before Judge Westcott Wilkin, with a jury, on the 26th day of June, 1885. W. P. Warner, Esq., appeared on behalf of the defendants and J. N. Granger, Esq., and J. M. Gilman, Esq., appeared on behalf of the plaintiffs.

A jury having been called and sworn, Mr. Gilman opened the case to the court and jury on behalf of the plaintiffs, and thereafter the following evidence was introduced and proceedings had:

Counsel for plaintiffs offers in evidence the assignment made by Charles Young to Clarence A. Winchester, dated April 27th, 1883.

Objected to as incompetent, irrelevant, and immaterial. Offered to show chain of title. Objection overruled, and defendant
32 excepted to the ruling.

Copy is hereto attached and entitled "assignment."

Counsel for plaintiffs also offers in evidence record of the endorsement.

Same objection, ruling, and exception. Copy of endorsement hereto attached, immediately following copy of assignment.

FRANK KEOGH, sworn and examined as a witness on behalf of the plaintiffs, testified:

Examined by Mr. GILMAN:

Q. Mr. Keogh, you are a member of the firm of Beaupre, Keogh & Co., of this city, defendants in this action?

A. Yes, sir.

Q. Do you recollect of receiving a letter from Mr. Winchester, the assignee of Young, a few days after this assignment, on the 27th of April, 1883?

A. I think such a letter was received.

Q. Have you got that letter here?

A. I think so.

Q. I wish you would produce it. I think that is the letter you received from Winchester, the first letter received, isn't it, dated May 1st?

A. I think it is. I have no recollection of whether I received any previous to that or not.

Mr. GILMAN: I offer that letter in evidence.

Marked by the court Exhibit A.
Received in evidence without objection.
Read to the jury as follows:

"FORSYTH, MONTANA, *May* 1, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

MESSRS.: I wish to notify you that Mr. Charles Young has made an assignment of all his real and personal property and stock to the subscriber. He did this for the purpose of protecting him-
33 self and also his creditors, not by any means for the purpose of defrauding his creditors. We have made an inventory of his goods and property of all kinds and find that his assets are about one thousand dollars above his liabilities; so that I think with careful management and time to make collections that there will be no difficulty in paying all the creditors dollar for dollar. My policy now will be to pay for everything that we order from this on as soon as it becomes due, and as fast as we can will pay the old scores. Enclosed please find $100.14 to apply on old account. We will wish to trade with you and will give you our custom if you are willing to let us have them at as reasonable figures as any one and at same terms. I send you a small order this time. Trusting you will be willing to fill the same and ship, as heretofore, in the name of Charles Young,

Very respectfully yours,

C. A. WINCHESTER, *Assignee.*"

Q. You received the $100.14 mentioned in that letter and credited it on the account you had against Charles Young?

A. I suppose so. I think it shows on our statement.

Q. You sent Mr. Winchester that receipt I suppose (showing witness a receipt)?

A. The receipt of our cashier; yes, sir.

Mr. GILMAN: We offer that in evidence; it is dated May 7th.

Marked by the court Exhibit B, being a receipt for the $100 mentioned in the letter introduced in evidence.

Q. Have you got your account here against Charles Young?

A. I think it is in amongst the papers there.

Q. (Paper handed witness.) Look at that. What I want to call your attention to particularly are the credits there. You find that $100 there, do you, on that account?

A. Yes, sir.

34 Q. And subsequent to that is another credit of $115; that you received from Mr. Winchester also?

A. Yes, sir.

Q. That makes two hundred and how much that you have credited on that account that you received from Winchester, the assignee?

A. $215.12.

Q. What is the balance of your claim there against Young?

A. According to this statement, it is $683.71.

Q. Now, how soon after this assignment did your firm commence selling goods to Mr. Winchester, assignee?

A. Well, I can't tell from memory. The respective statements there would show.

Paper handed witness.

Q. Is that a statement from your books?
A. Yes, sir.
Q. When was the first bill of goods sold by your firm to Winchester?
A. The first bill is charged here May 10th.
Q. Now, down to what date did the sales continue to him by your firm?
A. From this statement to November 19th.
Q. Were there sales made during each month of that period?
A. No, sir.
Q. What months were the sales made?
A. Excuse me; there were——
Q. Winchester, then, made purchases of you during each month?
A. Yes, sir.
Q. From the 10th of May down to November?
A. At least we supposed he did.
Q. At any rate, you shipped the goods and charged them to him?
A. Yes, sir.
Q. How many payments did he make to you on that account?
35 A. Do you mean the gross amount paid?
Q. Well, you may give the gross amount.
A. The gross amount is $1,737.50.
Q. That is the gross amount paid?
A. From this statement; yes, sir.
Q. How much?
A. $1,737.50.
Q. That was paid?
A. Yes, sir.
Q. Now, what was the balance due?
A. Do you mean the balance due us on this account?
Q. Yes; on the Winchester account.
A. $931.44.
Q. Now, how many payments were there to make up that aggregate sum you have given?
A. Do you mean the number of payments?
Q. Yes.
A. Twenty, according to this.
Q. During what months were they made?
A. The same months that the purchases were made.
Q. More or less payments made during each month?
A. Each month. Excuse me, the first payment commences in June instead of being in May.
Q. You knew of many of the wholesale houses of this place having claims against Young also?
A. No, sir; I did not.
Q. What?

A. No, sir.

Q. Didn't you know of any of the wholesale houses of this city having claims against Young?

A. At what time do you mean?

Q. Well, at the time he made this assignment or soon after.

A. No, sir.

Q. How soon did you learn that there were other wholesale houses?

36 A. The first time that I learned of any one specifically, except Bohrer & Hulsick, was after this suit was commenced by Noyes Bros. & Cutler, with the exception of Bohrer & Hulsick and an attaching creditor by the name of Hanauer, I think, that I also was aware of.

Q. Did you know of Winchester's purchasing goods from any other houses in this place than yours?

A. No; no direct knowledge.

Q. Well, didn't you ever understand that he was purchasing?

A. I had no knowledge whatever of any creditor except Bohrer & Hulsick. I inferred that he was buying goods of Bohrer & Hulsick, but no positive knowledge of it.

Q. Well, whether they were creditors or not, did you know that he was buying goods?

A. No; I did not.

Q. Were the goods you sold to Winchester sold at the fair market price and worth what you charged?

A. I suppose so.

Q. Well, is that your understanding?

A. That is my understanding; yes, certainly. I haven't charge of that department, and I can't say.

Cross-examination by Mr. WARNER:

Q. Mr. Keogh, I call your attention again to the credits of May 7th and 10th. I ask you whether or not both of those came from Mr. Winchester.

A. No. My impression is that one of those payments came from Mr. Young. I made a mistake in regard to that.

The COURT: Which one, if you know?

WITNESS: Well, I could tell better from the letters.

Q. Come by mail or——

A. By mail or express, I couldn't tell which.

Q. You say one of them came from Charles Young?

A. That was my impression.

Q. Well, look at those two letters (handing witness letters). In whose handwriting is this first letter, marked Exhibit A?

37 A. That is Mr. Winchester's handwriting.

Q. The next one?

A. The next is in Mr. Young's handwriting, inclosing $115.

Mr. WARNER: I offer that letter in evidence. (Mr. Warner then read the letter in evidence, as follows:)

FORSYTH, *May 7th*, 1883.

Beaupre, Keogh & Co., St. Paul.

GENTLEMEN: Inclosed find a check for $115, to apply on my account. I have transferred all my property to C. A. Winchester in the interest of my creditors. I should like to continue getting goods from you. We will pay dollar for dollar of all my indebtedness, but I must have time on the same. If you are willing to sell us, giving us your lowest cash rates—as we will meet all future bills on cash terms—we will continue to trade with you; otherwise we will have to buy goods of some other firm, as we mean to continue business until every dollar I owe is paid up. Mr. Winchester is a man of honest and upright principles and a business man, and would lend his name to no mean thing. If you do wish to trade with us and fill the following order, please notify me by telegraph, and we will continue to send you money as fast as we can afford it until our accounts are settled, and if you fill this order or have filled any part of it in our former order please send us bill at once and oblige.

(Signed) CHARLES YOUNG,
For C. A. Winchester, Assignee.

Mr. WARNER: Then there is an order of "one sack of good, fresh hams, two hundred pounds bacon, caddy of Climax tobacco, half of—something or other—coal oil, a dozen good brooms, one cheese. If you have shipped any of the above within two weeks you need not do so now. We have ordered some of these things before, and perhaps you have sent them.

"(Signed) C. A. W."

And then somebody has written on after it—

"WINCHESTER, *Assignee.*"

38 Q. The $115 came in that letter, eh?

A. Yes, sir.

Q. You received it and put it to the credit of the account of Charles Young?

A. Yes, sir.

Q. Charles Young was then owing you about how much?

A. Previous to that payment?

Q. Previous to that payment.

A. About $798.71.

Q. You stated to Mr. Gilman, in your direct examination, that at the time you got those sums and got those letters you didn't know about who Mr. Young was owing.

A. No, sir.

Q. Had you any information about it except as contained in the letters?

A. No, sir.

Q. Now, Mr. Keogh, with regard to what followed, after your attention has been called to that other account, an account that aggregated some—what is the aggregate purchases?

A. $2,668.94.
Q. On which was paid you——
A. $1,737.50.
Q. During the time that account was running had you been informed in any manner that they were buying goods from anybody else?
A. No, sir.
Q. That Mr. Winchester or Mr. Young, or either of them——
A. No, sir.
Q. —was buying goods from anybody else?
A. No, sir; except the impression I had that they were getting goods of Bohrer & Hullsick.
Q. When did you first find out anything about Bohrer & Hullsick?
A. I don't remember the date.
39 Q. I don't mean the exact date. About what time of year was it and how long before you sent your claims out to Miles City?
A. Well, it was a short time before.
Q. How did you learn of that?
A. Well, it was incidentally. I don't exactly remember how it came about.
Q. Well, what did you learn at that time—what was your notice?
A. Well, we had learned of a payment made to Bohrer & Hullsick of a large sum of money on their old account.
Q. How many hundred dollars?
A. Eight hundred dollars.
Q. You learned that there had been paid to Bohrer & Hulsick some eight hundred dollars?
A. Yes, sir.
Q. That was shortly before you sent your claims out there?
A. Well, I don't remember how long it was before I sent it out there.
Q. Do you remember how you learned that?
A. No, sir; I do not.
Q. Was that the first thing that called your attention to the trouble going on out there?
A. Well, that was the first thing that made us begin to look into the matter a little.
Q. Had you ever seen this assignment?
A. No, sir; not that I know of.
Q. At any time prior to sending your claims out there?
A. Not that I have any recollection of.
Q. Did you ever see it before to-day?
A. Well, I saw it, I think, before to-day, but the original document I had not seen.
Q. This original assignment?
A. No, sir.
Q. Did you ever see any copy of it before your suits were brought out there?

40 A. No, sir; not that I know of.

Q. Had you any knowledge about it except what was derived through those letters?

A. No, sir.

Q. Had you any knowledge as to whether or not Charles Young was engaged in running along that business with Mr. Winchester?

A. No, sir.

Q. At any time before your suits were brought?

A. No, sir.

Q. It is stated in the complaint in this action that Mr. Winchester started to carry on the business. Had you any knowledge of that being his intention farther than what was derived from that letter?

A. No, sir.

Q. At any time during the currency of that account?

A. No, sir.

Q. All of those orders that are mentioned in that account I see are small. State whether or not they are such as are usual or whether they are usnally small and such as a man would buy to piece up a stock, as Mr. Gilman speaks about?

A. That account current to Winchester is run about the same thing as Mr. Young's account previous to that, with one or two exceptions.

Mr. WARNER: We offer those two accounts in evidence as part of the cross-examination.

Mr. GILMAN: No objection.

The COURT. That is the Charles Young account and the Winchester account?

Mr. WARNER. Yes, sir.

The Young account was marked by the court Exhibit C, the Winchester account Exhibit D.

Q. You spoke of knowing of one other account, of S. Hanauer, at one time. Did you know of that before the report to you from the Miles City attorneys of the suits?

A. No, sir.

41 Q. Had you any knowledge of that except the fact Mr. Hanauer attached this same property?

A. That is all the knowledge.

Q. During the whole of this business were you or were you not the credit man of Beaupre, Keogh & Co.?

A. Yes.

Q. You had charge entirely of who should buy goods on credit and who not?

A. Yes, sir.

Q. Either of the other partners have anything to do with that?

A. No, sir.

Q. Entirely under your charge?

A. Entirely.

Q. Had you, during the currency of the Winchester account, any knowledge that Mr. Young was engaged in conducting the business either alone or with him?

A. No, sir.
Q. When did you first hear of that?
A. The first direct knowledge we got of that was a letter of his (of Young's).
Q. Do you mean long subsequent?
A. Just prior to our sending the accounts out.
Q. Is that the letter you handed me this morning?
A. Yes, sir; that is the first knowledge we had of it.
Q. (Handing witness letter.) Is that the one you mean?
A. Yes, sir; that is the letter.
Q. It was shortly after that that you sent the account to Miles City?
A. Yes, sir.

The letter identified by the witness was marked by the court Exhibit E.

Q. Did you sell them any goods after that?
A. No, sir.
Q. In whose handwriting is that letter?
A. It is in Mr. Young's.

42 Mr. WARNER: I offer it in evidence.

By Mr. GILMAN:

Q. This starts in here by saying, "In answer to yours of December 6th I beg leave to state." Do you recollect whether that letter of Dec. 6th was written by you to Young or to Winchester?
A. I don't remember.

Letter objected to as incompetent, irrelevant, and immaterial.

The COURT: I don't see how the letter can be material.

Exception by defendant.

Q. Did you ever know Mr. Young or Mr. Winchester personally anterior to any of this business?
A. No, sir.
Q. Or ever until within a few days?
A. No, sir.
Q. Never knew them by sight?
A. No, sir.

C. A. WINCHESTER, sworn as a witness for the plaintiffs, testified:

Direct examination by Mr. GILMAN:

Q. Where do you reside, Mr. Winchester?
A. At Miles City, Montana, is my home.
Q. You were the assignee of Mr. Young?
A. Yes, sir.
Q. Spoken of here in this suit? After this assignment was made and upon the making of it did you take possession of the stock of goods that is embraced in the assignment, then owned by Young?
A. I did.

Q. Did you take an inventory of the stock of goods then on hand?

A. Yes, sir—that is, I had taken an inventory.

43 Q. I see that there is attached to this assignment an inventory—I think of goods. When was that taken—before or after the assignment?

A. The inventory was taken just before the assignment, and it was not materially changed by the day of the assignment, very little goods having been sold.

Q. When were these goods taken from your possession under the writs of attachment mentioned in the pleadings?

A. I think it was the second day of January, 1884.

Q. How recently prior to that assignment had you taken an inventory of the goods on hand?

A. I took an inventory the first part of the month of December, I think commencing the first day and extending perhaps eight or ten days.

Q. You commenced it on the first of December, 1883?

A. Yes, sir.

Q. And went through the entire stock?

A. Yes, sir.

Q. Who assisted in taking that inventory?

A. Mr. Young assisted me.

Q. Taken by you and Mr. Young?

A. Yes, sir.

Q. Did you take it down, the entire inventory, in writing, the cost price of the goods, etc.?

A. Yes, sir.

Q. Have you got that inventory?

A. I think it is there with the papers.

(Three writing books shown witness.)

Q. State whether that is the inventory taken by you at that time of the goods then on hand.

A. Yes, sir; it is.

Q. State how you did the business with reference to the old stock that Young had on hand and the new purchases made by you Were they kept separate or was the entire stock all intermingled?

A. They were all commingled.

Q. The new purchase with the old?

44 A. Yes, sir; the kind of goods were placed together—the different kinds.

Q. At the time you took this inventory about what proportion of the stock then on hand consisted of the old Young stock and what proportion of the new purchases that you had made as assignee?

A. Well, I have no means of knowing except as I would estimate it from my knowledge of the general appearance of the goods. I think probably there was somewhere in the neighborhood of a third of the old stock on hand. I don't think to exceed that. There might not have been over one-fourth.

Q. The balance of the stock would be made up of your new purchases?

A. Yes, sir.

Q. In that inventory I notice the value is carried out there. How did you arrive at those values? What do those values represent?

A. They represent the actual cost of the goods laid down, after paying freight, drayage, and the cost price, here in St. Paul.

Q. You took the cost price and added to that the freight on the goods laid down at your place?

A. Yes, sir.

Q. And just carried that out as the value of the goods on that inventory?

A. Yes, sir.

Q. At the time you took that inventory did you have all of the goods listed there on hand?

A. Yes, sir.

Q. And those figures represent the cost price with the freight added?

A. Yes, sir.

Q. What was the aggregate amount of the stock then on hand, according to that mode of valuing?

Objected to as incompetent, irrelevant, and immaterial. Objection overruled and exception by defendant.

45 A. The sum total was $5,084.66—that is, the stock of goods in the store and in the cellar. There was other property besides, but that comes afterwards.

Q. Show me the last footing up.

A. There were some items that come afterwards—real estate, etc.

The COURT (to Mr. Warner): Is it your objection that that is not to be regarded as the actual value of the goods? What is the precise ground of your objection to this testimony?

Mr. WARNER: One is that if those papers are in evidence the papers would be the best evidence. He has not shown any capacity to pass any judgment on it at all. Besides that, this is an inventory taken early in December, and the value as laid in the complaint would be in January following.

Mr. GILMAN: Well, it is offered with reference not only to showing value but to showing the quantity of goods conveyed them. I will, in this connection, offer this inventory in evidence for the purpose of showing the quantity and kinds of goods on hand at that time and the cost prices with freight added.

Inventory marked Exhibit F, Exhibit F 2, and Exhibit F 3.

Q. Mr. Winchester, were you acquainted with the values of these goods at that time, and also on the 2d of January, when they were taken from your possession?

A. Yes, sir.

Q. How did the actual value of these goods compare with the prices at which you inventoried them at the time you took the inventory—that is, the cost prices with freight added? How did that price compare with the actual value of the goods at that time?

Objected to as incompetent and no sufficient foundation laid.

The COURT (to the witness): How long had you been engaged in that kind of business?

46 WITNESS: A general store?

The COURT: Yes.

WITNESS: Well, I had been engaged about eight months at that time, in that place, and in that particular class of goods. I had previously worked in a general store in Princeton, in this State, some four or five years before, for a short time, and learned something of values there, but not a great deal, perhaps, at that time.

Objection overruled and exception by defendant.

Question objected to read to the witness by the reporter.

A. Well, I think it was about the same. I don't think we could have replaced them for any less, if that is your meaning.

Q. Yes. I want to know whether the goods were worth more or less than the price at which you inventory them, taking the stock as a whole?

A. In consideration of the fact that the Northern Pacific railroad raised on their freights the first day of November about 40 per cent., I think most of the goods were really worth more in December than they would have been, and also any time during the winter worth more than they were prior to November 1st. They could not have been laid down during the winter at any time for the same money for which they were purchased.

Q. Well, now, how had values changed, if any, between the time you took that inventory and the second of January, when they were taken from your possession?

A. I don't think they could have changed—not very materially.

Q. On the 2d of January, when they were taken from your possession, how did the goods compare in value with the value at the time you took the inventory, the same goods?

Objected to as incompetent and that it does not appear that the witness knows or has any means of knowledge. Objection overruled and exception by defendant.

47 A. I think they were worth as much the 2d of January as they were when the inventory was taken, if not more. Some things were actually worth more, for the reason that I have stated—the rise in freights.

Q. Explain that a little more fully—about freights going up. How is that? What were the actual facts about the freights going up?

A. Can I refer to data?

Q. Yes; refresh your recollection.

(By Mr. WARNER:)

Q. What is it you are going to refer to?

WITNESS: I was going to give the rates of the Northern Pacific Company on the different classes of freight. I was simply going to give the freights in summer and winter.

Q. Is it a paper you made yourself?

A. It is a paper that come from J. M. Hannaford, general freight agent.

Mr. WARNER: If the court please, I object to the use of that paper for any purpose.

(By Mr. GILMAN:)

Q. Well, I don't care for that. State generally whether freights did go up on the class of merchandise that you had in store in the fall of the year 1883 or not; and, if so, to what extent.

A. They were raised about 40 per cent.—from 30 to 40 per cent.—that is, first-class freight in the summer was $2 a hundred; in the winter, beginning with November 1st, the rate was $2.75, which figured, I believe, gives thirty-seven and one-half per cent. raise; and second-class freight was $1.75 in the summer, raised to $2.36 in the winter, and so on in that proportion, making somewhere about 35 to 40 per cent. general raise in the freight rates.

Q. The stock of goods then got in before these rates went up was worth more, or at least could not be replaced during the winter while the freights were up——

A. No, sir.

Q. —at the same figures?

48 A. No, sir.

Q. Now, between the times that you made this inventory, in December, 1883, and the second of January, when the goods were taken from your possession, how many of these goods had you sold that had been delivered?

A. I think in the neighborhood of perhaps $500 worth.

Q. Well, would five hundred dollars fully cover all that you had sold?

Objected to that it does not appear that this witness was there during December or knows what was said except by hearsay, at least.

(By the COURT:)

Q. Well, were you there during that time?

A. I was in the store every day until the 20th day of December, or every day with the exception of two or three days about the 10th of December; that I took a trip up to Rosebud on a collecting tour, working for the interest of the house.

(By Mr. WARNER:)

Q. Do you say you was in the store every day to December 20th?

A. Yes, sir.

Q. 1883?

A. Yes, sir; with the exception which I made. Did you note that? About the 10th of December I was out about two or three days on a collecting tour.

(By Mr. GILMAN:)

Q. Well, do you know from your own knowledge of the stock of

goods there; about what quantity was sold in that month of December, before the 2d of January?

A. I cannot swear positively to what was sold after the 20th day of December, but from my general knowledge of the way business run there—I can only form an estimate of how much was sold during that month—up to the 20th I think there was $300 worth sold during that month. I simply estimate that; probably there were $200 more up to the 2d day of January.

Q. How was trade at that season of the year?

49 A. It was rather slack; rather dull.

Q. What is the general character of the trade there; who were the people that you were selling to mostly?

A. The people right around the town were principally employés of the Northern Pacific railroad, and there were some ranches in the vicinity.

Q. Where was this stock of goods—at what town?

A. At the town of Forsyth, Custer county, Montana.

Q. Well, were there any goods that came into the store after this inventory was taken and before the 2d of January and which do not appear in this inventory?

A. I think there were some.

Q. Do you recollect who they came from?

A. No, sir; I can't tell just now. I know that we got a bill of goods from Noyes Bros. & Cutler, but I think that was included in the inventory.

Q. Well, do you know of any that you got after the inventory was taken not included in the inventory?

A. I think there were some, but I don't just now recall from what part of it.

Q. Well, do you know about the amount?

A. No, sir; I can't say positively.

Q. Do you know about what time they were obtained?

A. I can't tell that; I have forgotten the date.

Q. You say that you were there up until the 20th of December. Where did you go then?

A. I went to Miles City.

Q. And when did you return?

A. The next time I saw Forsyth was in April, 1884.

Q. Whom did you leave in charge of the store when you went to Miles City?

Objected to by Mr. Warner as leading.

Q. Did you leave somebody in charge?

A. Yes, sir.

Q. Whom?

50 A. Mr. Charles Young.

Q. What did you go to Miles City for?

A. I went there to spend the holidays with my family.

Q. Your family was living at Miles City?

A. Yes, sir; at that time.

Q. How far is Miles City from Forsyth?

A. 45 miles; 45 or 47, I forget which; about that distance.
Q. You went to spend the holidays?
A. Yes, sir.
Q. And what became of the stock of goods while you were away?
A. They were attached while I was away.
Q. State in what capacity you left Mr. Young in the charge of the goods when you went to Miles City.

Mr. WARNER: I object to any questions on that subject except you ask what was said and what was done.

Q. Well, state what you said and did to Mr. Young when you left him in charge and went to Miles City.
A. Mr. Young had been in my employ as a clerk since his return from the park, some time about the first of November, I think. He had been working for me as a clerk on a salary.

(By Mr. WARNER:)

Q. Where do you say he had been in your employ?
A. I say he was in my employ as a clerk and had been since about the first of November—since his return from the National Park. He had been up there during the summer some months. He did some help in the fall months and I hired him at a stated salary to clerk for me. When I went to Miles City I left him in charge of the store, giving him instructions how to conduct the business and not to buy any goods without my knowledge, and especially charging him that as soon as he could get the money to pay some money due Beaupre, Keogh & Co. on some collections
51 which they had sent and which were then in the hands of the express agent, in accordance with letters which I had written the firm that I would pay them the last of December or first of January—the first collection somewhere near $300, and another collection which I promised them I would pay within the 30 days following. I think that they have the letters; they can show that. I furthermore gave the express and freight agent at Forsyth a written order to allow Mr. Young to have any goods which came directed to me by his paying the charges on the same. That order can be produced.

(Paper handed witness.)

Q. Is that the order you gave the freight agent there?
A. Yes, sir.
Q. That given the same day you left there?
A. Yes, sir; the 20th of December. That was written some time during the day. I left that evening.

Paper identified by witness, marked by the court Exhibit G.

Court here took a recess until 2 p. m.

Having convened pursuant to adjournment, the trial proceeded as follows:

Exhibit G was read in evidence by Mr. Gilman as follows:

"FORSYTH, MONTANA, *Dec.* 20, 1883.

Mr. R. M. J. Glenn, station agent:

"Please allow Mr. Charles Young to have any freight or express that may come to your office billed to me.

"C. A. WINCHESTER, *Assignee.*"

Q. I understood you gave this order when you went away on the 20th to spend the holidays at Miles City?

A. Yes, sir.

Q. And you did not return again to this place until after the goods were attached?

52 A. No, sir.

Q. Can you state now what new goods were received into the store after this inventory and that are not embraced in the inventory?

A. Yes, sir.

Q. What?

A. According to the best of my knowledge, there was some coal oil from the Weaver Lamp Company, of Bismarck, amounting to $18, and a small bill of goods from C. Gotzian & Co., boots and shoes, to the amount of $16.

Q. Those all the bills you recollect of?

A. Yes, sir; those are all that I recollect of.

Q. While you were at Miles City in December, that year, did you give any instructions to Mr. Young, whom you left in charge?

A. Yes, sir; I think I did write to him.

Mr. WARNER: Well, if it is in writing, let's have the letter.

WITNESS: I guess they are there.

Q. See if that is the letter that you wrote to him (handing witness letter).

A. Yes, sir; that is my writing.

Q. It seems to be dated Forsyth. Is that written at Forsyth or at Miles City?

A. That was writen at Miles City, December 21st. I see I have dated it "Forsyth;" that was from force of habit, of course. I had been at Forsyth and had been in the habit of dating my letters there, and unthinkingly, probably, used that word there, where I should have written "Miles City." I know that I was not in Forsyth on the 21st, for I left there on the 20th.

Letter identified by the witness, marked by the court Exhibit H, and offered in evidence by plaintiffs' counsel.

Objected to as incompetent and immaterial.

Mr. GILMAN: I won't press it, I will withdraw it.

Q. Mr. Winchester, after these goods were attached what disposition did you make of them, if any?

53 A. I didn't make any immediately.

Q. Well?

A. Some time after—about perhaps two or three weeks after—I sold them to Noyes Bros.

Mr. WARNER (to Mr. Gilman): Was that in writing? I object to your asking anything about it if it was in writing.

Mr. GILMAN: It was in writing. I ask him for the mere bald facts.

Mr. WARNER: I object to that.

WITNESS: I have a bill of sale of it, if that is what you mean by "in writing."

Cross-examination by Mr. WARNER:

Q. Where was you prior to May 1st, 1883? Where were you living?

A. I was in Forsyth; had been there since the 30th day of August previous.

Q. What doing?

A. I was running a lumber yard.

Q. Anything else?

A. Lumber yard and hardware.

Q. Nothing else?

A. No, sir.

Q. For youself or somebody else?

A. For another party.

Q. For whom?

A. Mr. T. J. Bryan, of Miles City.

Q. Then for some time in the fall, 1882, down to the time of this assignment, you were in a lumber yard and hardware store for Mr. Bryan. Is that what you mean?

A. Yes, sir.

Q. Clerking for Mr. Bryan?

A. Well, not exactly clerking; I had a little more jurisdiction than clerk.

Q. Did you know Mr. Young prior to the day of this assignment?

54 A. Yes, sir.

Q. How long had you known him?

A. I first met him some time in the fall of 1882; I can't state when.

Q. There at Forsyth?

A. At Forsyth; perhaps about October; I wouldn't say.

Q. Was your family living at Forsyth at that time?

A. What time?

Q. In the fall of 1882 and in the winter following.

A. About the first of November, I think it was, my wife came there; she had been living in Miles previous to that.

Q. Did she come there about the first of November and stay there until when?

A. Stayed just about a year.

Q. Well, that is until when?

A. About the first of November, 1883.

Q. Keeping house there, was you?
A. Yes, sir.
Q. On the first day of November, 1883, what became of her?
A. I can't say whether it was the first day of November, but some time in the month of November—the first part—she went down to Miles City again.
Q. Did you go down with her?
A. No, sir.
Q. Didn't she board there at Miles City or keep house there?
A. I think she boarded for a week or two, and then she commenced keeping house in a small room that she had rented, or two rooms, rather.
Q. That was November, 1883, was it?
A. Yes, sir.
Q. Well, this assignment bears date the 27th day of April. Where was it made?
A. The writings were drawn up in Miles City.
55 Q. Delivered there at Miles City, was it?
A. No, sir.
Q. Where was it delivered to you?
A. Delivered to me at the store in Forsyth.
Q. Who was present?
A. I will take that back; it was delivered to me in the presence of the justice of the peace there, in his place of business.
Q. In Forsyth?
A. Before whom it was acknowledged and where I signed it.
Q. In Forsyth?
A. In Forsyth; yes, sir.
Q. Dr. Burley there?
A. No, sir.
Q. Drawn up by him, was it?
A. Drawn up by Dr. Burley; yes, sir.
Q. Well, who delivered it to you?
A. Mr. Young, I think.
Q. What did you then do?
A. Went over to the store and took possession.
Q. Was there any sign over the door?
A. I don't think there was.
Q. Had there never been?
A. I don't think there had.
Q. Did you put up any?
A. I think we put up a sign some time along that spring. I am not certain whether it was before or after the assignment.
Q. Well, what sign did you put up there?
A. The sign read, "Charles Young, dealer in drugs, notions, and general merchandise."
Q. What became of that sign?
A. I do not know.
Q. Where was it when you last saw it?
A. It was on the store.
Q. Who put it up there, you or he? Who got it made?

56 A. I am not certain now who did.

Q. Was it there before the assignment, or was it put up afterwards?

A. I can't say. I don't recollect the time it was put up.

Q. What man put it up?

A. I helped put it up myself.

Q. Well, was it before the assignment, then, or afterwards? I should think you might tell by that.

A. I was in Mr. Young's employ two weeks as a clerk before the assignment was made, so I can't say whether we put it up before the assignment was made to me or after; somewhere about that time, I think.

Q. Well, what was the size of this building—about how much front and depth?

A. Sixteen feet front, forty feet deep.

Q. One or two stories?

A. One story, eight feet high.

Q. Have a cellar under it?

A. There was no cellar in the spring, when I took charge of the place. We put in a cellar during the summer and fall.

Q. What was the size of that?

A. I think it must have been about 14 x 20.

Q. How deep?

A. About seven feet, I think.

Q. Just an excavation under the store, was it?

A. Yes, sir.

Q. No wall or anything like that—a mere hole in the ground?

A. It was walled up with boards.

Q. What did you say the size of that hole was?

A. Fourteen by twenty, as near as I can recollect.

Q. You say there was but one floor to it. Was it all one room or more than one?

A. There was a partition about eight feet from the back end across, and then another partition running lengthwise of the
57 building, about six feet from one side, making three rooms of this building sixteen by forty; and, furthermore, I will add there was a small shed at the back of this, if you wish to know the size.

Q. This rear room, you say, was eight feet deep, was it?

A. I think about that; yes, sir.

Q. And the next room was how deep?

A. Which do you mean?

Q. I didn't understand your description there.

A. Perhaps I had better make a drawing. If I had some paper I could make a drawing and show you.

Q. Well, please answer the question. We can get along. The first partition was eight feet from the back side, you say, and the next came where?

A. The next partition was from that partition to the back end of the building, making a small room.

Q. Making two small rooms in the rear part?

A. In the rear part; yes, sir; and then back of that was another room, about 12 by 14.

Q. Now, in front of this rear room was it all in one room?

A. Yes, sir.

Q. Were these small rooms in the rear used to store goods in?

A. One of them was.

Q. What kind of goods did you keep in there?

A. Had a little of everything. We kept, principally, I think, groceries in that department, and some shelves there with boots and shoes on.

Q. What did you keep in the other?

A. The other small room? That small room was used as a sleeping-room—a bed in it.

Q. Was the rest of the building in front of that used for the store proper?

A. Yes, sir.

Q. Shelving on each side of it?

A. Yes, sir.

58 Q. Now, what did you say about a shed in the rear?

A. There was a shed roof addition or part of a building that had been moved up there, I think, about 12 x 14.

Q. What was that used for?

A. That was used for storing goods.

Q. What was this hole in the ground used for?

A. For storing goods.

Q. What kind of goods did you keep down there?

A. Well, such goods as wanted to be kept cool in the summer and warm in the winter.

Q. Well, what were they?

A. Well, all kinds of vegetables and a great many canned goods, pork, bacon, butter, fruits. I know there were two or three boxes of glass bottles which were used in the drug business in there.

Q. Well, Mr. Winchester, you took hold of this in May, didn't you?

A. No, sir.

Q. Or the end of April?

A. April.

Q. What was the amount of the debts at that time?

A. I think in the neighborhood of five thousand dollars.

Q. And you say the property, the stock in trade, at that time was how much?

A. About $4,000, the goods in the store.

Q. You wrote that letter that was put in evidence this morning, did you?

A. Yes, sir.

Q. Where did the money come from that you sent in that letter? Where did you get it?

A. Which letter do you mean? The one to Messrs. Beaupre, Keogh & Co.?

Q. Yes.

A. I got the money from the sales made after I went in there or

from collections; I don't know which. There were some collections made.

59 Q. It came from this same assigned property?

A. Yes, sir.

Q. Well, what about the $115? Did you have anything to do with that?

A. I saw it—handled it—had it in the store there.

Q. Where did it come from?

A. My recollection is that it was a check from the railroad company for services which Mr. Young had rendered as express agent for them, carrying express or something of that kind—business in which he had been employed before this.

Q. Did he ever hand it over to you?

A. Yes, sir.

Q. Why didn't you send it?

A. Because I asked him to write that letter, to more fully explain to the parties. I was not acquainted with these parties at all. I asked him to write that letter, and that was put into the same letter.

Q. Why didn't you write it yourself?

A. Because, as I have said, I wished him to explain to them something about——

Q. Was he in your employ at that time?

A. Yes, sir.

Q. You had been clerking for him up to the assignment, and afterwards you switched around, and you was boss and he was your clerk, eh?

A. Yes, sir.

Q. Is that it?

A. That's just the way it was.

Q. How much was you paying him as clerk?

A. There was no definite sum set, first. Mr. Young desired to pay every dollar he owed, and he said he would help me until I got the run of the business, and all he wanted was enough to live on.

Q. I know you are plumb full of that, but then we will wait until you get to it. You say there was no sum set for his salary?

60 A. No, sir; not at that time.

Q. Well, when were his wages first set?

A. About the first of November, 1883.

Q. Where was that done—where was that arrangement made?

A. At Forsyth.

Q. In whose presence?

A. I don't know that there was any one present besides Mr. Young and myself.

Q. Well, what amount was then set?

A. He was to have $50 a month.

Q. For how long a time?

A. No time stated.

Q. Did he stay there with you, in the way you have stated, from the time of that assignment until November 1st?

A. No, sir.

Q. Well, until when?

A. He remained there until about the middle of June, and then he was gone a week or two and came back and stayed a few days, and then he went away again and was gone until the first of November.

Q. Well, how long was he gone the first time? You say he stayed until the middle of June; that was during May and all the first half of June. How long was he gone?

A. I think two or three weeks.

Q. Where to?

A. He told me he went to Livingston and Helena, and I think in the meantime stopped at Billings. I think he stopped at Billings either going or coming.

Q. Well, after he left in the middle of June, he got back when?

A. Some time in the fore part of July; after the 4th, I know. I think, perhaps, the 6th or 7th.

Q. He stayed how long?

A. I couldn't say just how long he stayed then; perhaps a week.

61 Q. Then what did he do?

A. Then he went to the National Park.

Q. Do you mean the National Park, so called?

A. I mean what I said. I said the National Park.

Q. I didn't hear you. I haven't got a very good pair of ears. How long did he stay there?

A. He stayed there until about the 1st of November, 1883.

Q. Well, did he come back then to Forsyth?

A. Yes, sir.

Q. Well, what did he commence doing then?

A. He went to clerking for me.

Q. That is the time this bargain was made at $50 a month, eh?

A. Yes, sir.

Q. Then he stayed from that on until after the attachment?

A. Yes, sir—that is, most of the time. He was away, perhaps, a day or two at a time once or twice during the time, but not very long.

Q. Your wife moved to Miles City about what time in November?

A. Some time in the first part of the month; I don't know what date. I don't remember.

Q. Well, you left when?

A. 20th of December.

Q. Did you leave at any time before that? Were you gone at all?

A. I went down about the last day of November, I think. I went to Miles City to pay the taxes; to pay them the first day of December. That is when they were due there. We wanted to save any extra that might be added, so we paid them on that day. I think I went down the last day of November and was there the first day of December.

Q. How long did you stay?

62 A. I think one day. I think I returned the evening of the first day of December.

Q. Then you came back to Forsyth, did you?

A. Yes, sir.

Q. How long did you stay then? Did you stay then until the 22d?

A. Yes, sir; I think so.

Q. On the 20th—the 20th or 22d?

A. The 20th.

Q. Then you went to Miles, and remained there after that, did you—until after the attachment?

A. Yes, sir.

Q. Remained there until April the next year; never went back to Forsyth any more?

A. I went to Forsyth in April the next spring.

Q. Well, I say not until April the next year.

A. Not until April.

Q. Had you ever been in the store-keeping business before that—general store?

A. I have had some experience in it.

Q. Where?

A. Princeton, Minnesota.

Q. Keeping a general store or clerking?

A. I was clerking for one D. H. Murray.

Q. How long?

A. Not very long. I don't remember the exact time. I was in the place teaching school at the time, and at the winter holidays—Mr. Murray's health was poor, and he asked me to help a little in the store, and I think, perhaps, it was two or three weeks.

Q. You say that while you were there clerking or else somewhere in that vicinity (at Forsyth), either before or after this assignment, the sign of Charles Young was put up. Why didn't you take that down when you became assignee?

A. I didn't think anything about it, as if it was necessary.

63 Mr. GILMAN: Well, I object to this drift of examination as irrelevant and immaterial. I cannot see the materiality of it.

Mr. WARNER: In regard to this assignment I claim under this pleading that I have a right to cross-examine this witness fully on the subject.

Mr. GILMAN: With reference to the establishment of what proposition? What is it directed to?

Mr. WARNER: If you can't see that, I don't care to state it.

The COURT: Do you claim the right to cross-examine to show that this assignment is fraudulent?

Mr. WARNER: Yes, sir; and that there was never any delivery of this property to this witness within the meaning of the laws of Montana.

Mr. GILMAN: Well, now, I object to the examination if it is to be directed to any such end as the counsel has suggested. I shall object to any testimony which may be offered here, either in cross-examination of our witnesses or affirmatively on their part, which goes to attack the character of this assignment, claiming that the defend-

ants are estopped from attempting to inpeach the character of the assignment, having elected to take under it.

The COURT: What do you propose to show by this course of inquiry—that is, cross-examination of this witness? What is the object of this course of inquiry?

Mr. WARNER: Well, as I stated at the outset, the object is to show that there has never been any transfer of the possession in this case—to show that this store was run by Charles Young from the start; that while there was an assignment in form there was none in fact; that this man is but a factotum from the beginning—started as a clerk and remained a clerk to the end.

Same objection.

The COURT: I think I will not allow it at present.

Exception by defendants' counsel.

Q. Well, Mr. Winchester, you say that you bought goods yourself as assignee of Beaupre, Keogh & Co., the defendants in this case, during the year 1883?

64 A. Yes, sir.

Q. Did you not, when you was sued in Miles City for that bill, put in an answer, under oath, denying that you had bought individually from them?

A. I did—denying that I had bought any goods as C. A. Winchester personally.

Q. The suit was brought against C. A. Winchester and Charles Young, wasn't it?

A. Yes, sir; and I only bought goods in my capacity as assignee. They sued me in a personal capacity.

Q. They set up in that case that they had sold goods to you two men; nine hundred odd dollars' worth of goods; that there was a balance of nine hundred odd dollars, and you denied it under oath, didn't you?

Objected to as incompetent, irrelevant, immaterial, and not the best evidence.

The COURT: Well, he has already stated that he had put in an answer denying that he had sold any goods in a private capacity; that he was sued as an individual. To that extent the testimony is in.

Mr. GILMAN: I am willing it should stand on that.

Q. Well, when this suit was brought against you and Mr. Young by the defendants in this case—Beaupre, Keogh & Co.—you and Mr. Young first put in a demurrer to the complaint, didn't you?

Objected to as not the best evidence.

The COURT: I think you may ask.

Q. Did you or did you not?

A. What was the question?

Q. Did you first put in a demurrer to that case?

A. Yes, sir; I think so.

Q. Had Mr. Burley put it in?

A. Yes, sir.

Q. And then after that was overruled you put in an answer, didn't you?

A. Yes, sir.

65 Q. I want you to read this complaint, and then your answer, and ask you if you made such an answer as that in the case.

Objected to as immaterial.

If the counsel wants to offer that as evidence we shall not object to it on account of the shape or form it is in, but simply as to materiality.

Mr. WARNER: The object is to contradict this witness. He says he has bought goods of us and his answer says he didn't.

The COURT: Do you claim, Mr. Gilman, that that is not a material point?

Mr. GILMAN: It is not material as to whether he said he did or did not purchase these goods. It is admitted on both sides that he purchased goods as assignee of Beaupre, Keogh & Co. That is not disputed.

Mr. WARNER: They claim, in one aspect of this case, that an assignee can never buy anything, and then claim, in another aspect, that only a person can buy; that if suit was brought for these goods it could only be brought against whoever bought them; not against any assignee.

The COURT: Well, show it to the witness and let him see whether he signed such a paper.

Mr. WARNER: This is a certified copy of the record I have here and not the original.

The COURT: Well, I think I will let you ask.

Q. I read you the complaint (reading): "Territory of Montana, county of Custer. In the case of Beaupre, Keogh & Co. against Charles Young and Clarence A. Winchester. The above-named plaintiffs, for a cause of action against the above-named defendants, complain and allege that said plaintiffs at all times hereinafter mentioned were copartners and doing business as merchants at St. Paul, in the State of Minnesota, under the firm name of Beaupre, Keogh & Co.; that said defendants are indebted to said plaintiffs in the sum of nine hundred and thirty-one dollars and forty-four cents for

66 the balance of an account for goods, wares, and merchandise, to wit, groceries, sold and delivered by said plaintiffs to said defendants at the request of said defendants at various times between the 1st of May, 1883, and the 20th of November, 1883, and the whole amount of the aggregate value of the items charged to said defendants is the sum of $2,668.94, no part of which has been paid except the sum of $1,737.41, leaving a balance of $931.44 still unpaid; that said defendants have not paid the said last-mentioned sum—the balance of said account—or any part thereof. Wherefore said plaintiffs demand judgment."

Now, I ask you if you put into that this answer and swore to it. After the title of the case (reading), "The defendant, Clarence A. Winchester, for himself, answering the complaint herein, denies that he is indebted to the plaintiffs in the sum of $931.44 or in any other sum for the balance of an account for goods, wares, and merchandise sold and delivered by said plaintiffs to said defendants between the 1st of May, 1883, and the 20th of November, 1883, or at any other time or times; denies that there is a balance of an account in the sum of $931.44 still unpaid, due from said defendant, Winchester, to the plaintiffs.

Wherefore the defendant, Clarence A. Winchester, demands judgment against the said plaintiffs that he go hence."

TERRITORY OF MONTANA, }
County of Custer. }

CLARENCE A. WINCHESTER, being duly sworn, says: I am the defendant in the above-entitled action. I have read the foregoing answer and know the contents, and the same is true of my own knowledge except as to the matters therein stated on information and belief, and as to those matters I believe it to be true.

(Signed) C. A. WINCHESTER.

April 21, 1884.

Q. Did you or did you not put that in?

67 A. I think probably that is the answer that was put in, to the best of my recollection.

Q. Did you or did you not claim, at the time that suit was brought, that you had been merely clerking there, and that the goods that had been bought had been bought really by Mr. Young alone?

A. No, sir; I never claimed such a thing.

Q. You never claimed that?

A. No, sir. Perhaps right in that connection, while you have asked that question, I might, if you wish me to, explain what I did say.

Q. Why did you take this inventory on the first day of December?

A. To see how our business—how the business stood.

Q. Why did you take it back when you started to say "our business" and then say "the business"? You started out to say "our business stood;" that is what you said. Why did you say that?

A. Well, you know it is very natural where two persons are working, no matter whether one is boss and the other is working for him or whether they are both on equal terms, to say "our" and "us" instead of saying "I" and "me" and "your" and "yours."

Q. Why did you take it back, then?

A. Because you folks have tried to make a handle out of that, and I wanted to be careful in what I was saying. You know those that are working for you (I might say in regard to the business I was doing)—I might say "us" or "we" will do so and so or you might say the same to me.

Q. Well, it was an honest statement. Why did you take it back?

(No answer.)

The COURT: He has already stated.

Q. Well, now, we will go to the inventory. Why did you take that inventory on the first day of December?

A. To see how the business stood.

Q. Well, what was the object of seeing how it stood?

68 A. To see whether I was getting paid up; to see how much goods we had on hand and what the probability was of being able to pay.

Q. To see whether it would fail the second time. Is that what you mean?

A. No, sir; I knew we hadn't failed the second time. I was satisfied we had more goods on hand then than I had in the spring.

Q. How much was owing at the date of that inventory?

A. I couldn't say exactly.

Q. I see that during recess you have got a memorandum of a couple of bills. Have you got the books here of that institution for 1883?

A. I think we have the invoices.

Q. Is that all the books pertaining to that business of 1883 that you have got here?

A. I think there are some other books and papers.

Q. Have you got the account books here?

A. Not all of them.

Q. Did you say "not all of them"?

A. Not all of them; no, sir.

Q. Well, what have you got here?

A. Got the invoice book and some statements—some monthly——

Q. Have you got the day book?

A. No, sir.

Q. Have you got the ledger?

A. No, sir.

Q. Where is it?

A. I don't know.

Q. What has become of it?

A. I can't say; I have never seen it since I——

Q. Did you ever have one?

A. Yes, sir.

Q. Where did you last see it?

A. In the store at Forsyth.

69 Q. Did you go on doing business after the assignment, pursuing the same kind of business that you had before, buying and selling goods, just as you did before the assignment?

A. Yes, sir; I think so; very nearly the same; sold goods, and we bought some goods.

Q. Isn't it a fact that when Mr. Young came back there, in the first days of November, and found what you had been doing that he discharged you and took possession of that stock himself?

A. No, sir; he couldn't discharge me.

Q. Well, didn't he make complaints of you that you hadn't kept the bills paid up and he didn't want you there any more—send you back to Miles City?

A. No, sir.

Q. Didn't you have any talk like that with him?

A. No, sir; no talk in regard to his sending me off at all. He said he thought I out to have got more paid up during the summer, and didn't see why I hadn't; something to that effect. I kept a strict cash account.

Q. Isn't that the reason why you moved to Miles City—that he hadn't any further occasion for your services there?

A. No, sir; that is not the reason.

Q. What did you send your wife to Miles City for?

A. There was no place in the town that was decent to live in during the winter.

Q. She had lived there the winter before, hadn't she?

A. Yes, sir; but the place where we lived the winter before—I was then in the employ of another man.

Q. Did you take his receipt for these goods in this invoice when you left?

A. No, sir.

Q. Did you take any receipt from him?

A. I did not.

Q. Did you render any account to him of what you had been doing during the summer?

A. Yes, sir.

Q. Where is that?

70 A. I don't know. I made monthly balance-sheets every month.

Q. What did you do with them?

A. Mr. Young had them to examine. The last I saw of them or last I knew about them was—there was some I sent to him when he was away in the park. I don't know what was done with those. Some I made in the spring was there in a little drawer under one of the counters.

Q. Did you send them to him monthly while he was at the park?

A. Yes, sir; he desired me to do so, so that he could know how the business was going on.

Q. Was there any understanding between you and him at the store how much you should charge a month for your services?

A. Yes, sir.

Q. How much was it?

A. $75 a month. That was what I agreed to work for him at as clerk, when he hired me as clerk, and to keep books for him; and when the assignment was made I would work right along just the same—wouldn't make any difference in the wages. I thought it was fair enough.

Q. Now, you say these goods were worth, on the first day of December, something like $5,000. Didn't you sell them after the levy for $550?

A. Yes, sir.

Q. Sell them to Friend Granger?

A. Yes, sir; sold them to Noyes Bros. & Cutler through him as their agent.

Q. For $550?

A. Yes, sir.

Q. Did you get the money?

A. Yes, sir.

Q. Did you pay it back to him?

A. No, sir.

Q. Didn't you send it back to the same parties that had furnished it?

71 A. I made a distribution of it to the principal creditors, with the exception of these attaching parties.

Q. Well, tell me what you did with it.

A. I sent part of it to Noyes Bros. & Cutler.

Q. Well, what part?

A. I can't say now the exact number of dollars, but it was in proportion—somewhere in proportion—to what I was owing them on the account; some of it to C. Gotzian & Co.; some of it to Lindekes, Warner & Schurmeier; I think some to Campbell & Burbank. I know they were creditors. I think I sent some to them.

Q. Bohrer & Hulsick?

A. Bohrer & Hulsick. I think I sent some to them.

Q. Did you send it to them by mail or did you send it to them by Granger?

A. I sent it by mail; I sent them in checks.

Q. Did you get the money from him, Mr. Granger?

A. Yes, sir.

Q. Why didn't you distribute it among all the creditors?

A. Well, I didn't want to give any to the party that had attached the goods and made them almost valueless. I didn't think they deserved any then.

Q. Did you send them to these parties as assignee?

A. Send these moneys to these parties as assignee? I think so.

Q. But you didn't send it to all the creditors *pro rata?*

A. No, sir; not to all of them. Those were the principal ones—those to whom I was owing the most. There was one creditor, a brother of Mr. Young, to whom we was owing $600. I didn't send him anything, which I, perhaps, would have done if I was trying to——

Q. He didn't furnish any of this money, did he?

A. I don't think he knew anything about it at all.

Q. Well, Mr. Winchester, the long and short of it is that that was a sham proceeding, wasn't it? Mr. Granger handed you $550 and you sent it back to the persons that furnished it?

72 A. I don't think there was any sham about it. I think it was a legal transaction.

Q. Isn't that all there was about it—he handed you so much money and you sent it back to the parties it came from?

A. I don't know where the money came from.

Q. Didn't he tell you?

A. No, sir; I think not; only that he drew on the bank on Noyes Bros. & Cutler. I think he got all the money from that firm.

Q. Didn't he tell you the parties that he got the money from?

A. No, sir; he didn't tell me that he got money from any parties excepting the one named—Noyes Bros. & Cutler.

Q. How did you come to pick out these men?

A. I have already stated.

Q. Is it a fact you sent back, then, the amount they furnished, isn't it?

A. I don't know anything about how much they furnished. I don't know that they furnished anything.

Q. Well, didn't he give you a memorandum of how much each had furnished and you send the money back to them?

A. No, sir; he did not.

Q. This took place while the sheriff was in possession, did it?

A. Yes, sir.

Q. Did you make this assignment that Mr. Gilman has in his hands to Mr. Granger or Messrs. Noyes Bros. & Cutler?

A. I have not seen the paper. I don't know what it is.

Q. You say that after the first day of December some of these goods were sold. Do you know Mr. J. H. Garlock?

A. Yes, sir.

Q. Did you at any time tell him that Mr. Young after you left there had sold about $500 worth that never came to your hands?

73 A. I don't remember of telling him anything of the kind.

Q. In Mr. Strivell & Garlock's, in Miles City, in November last, did you tell Mr. Garlock that Mr. Young had collected and sold $500 worth of goods?

A. I don't remember of telling him.

Q. In December previous, the December of 1883, and that it never came to your hands at all?

A. I don't remember of telling that; no, sir.

Q. Do you swear that you didn't?

A. No, sir; I wouldn't swear positively because I don't remember.

Q. Well, what is the fact? Do you know anything about it? Did he ever turn over anything to you?

A. Yes, sir.

Q. For business done in December?

A. Yes, sir.

Q. Well, give us the date and how much and what you did with it.

A. Some time in January, after the attachment, he sent me a little over a hundred dollars. I used it to pay an attorney to fight this attachment, or rather to pay an attorney to put in my answer, etc.

Q. He turned over to you a hundred dollars, you say?

A. A hundred dollars and a little over. I have forgotten just how much. I know I had to pay an attorney an even hundred. I think I had two or three dollars left after paying him.

Q. You mean that Young let you have a hundred dollars and you

paid it to Dr. Burley. That is what you mean, in plain terms, isn't it?

A. Yes, sir.

Q. You didn't pay it to Granger?

A. No, sir.

Q. Didn't pay it to any creditors?

A. I hadn't seen Granger at that time, I don't think.

Q. Well, did you give Young a receipt for that money?

74 A. I don't know that I gave a receipt, only that I think I wrote a letter back to him stating that I had received the money, or something like that, and what I had done with it.

—. He was still at Forsyth, was he?

A. Yes, sir.

Q. Was that all he ever accounted for, a hundred dollars?

A. I think that is all he ever turned over to me.

Q. What was done with the proceeds of the sales of December?

A. He told me that he paid some bills.

Q. Well, I ask you to state what you know about it.

A. Well, until the time I left, December 20th, I was paying bills.

Q. Well, did he ever turn over to you any of those proceeds except, as you state, this hundred dollars?

A. I have already answered that. That is all the money he turned over to me.

Q. You was not at this store at the time the sheriff made the levy at all?

A. No, sir.

Q. You was in Miles City?

A. Yes, sir.

Q. Where your family was?

A. Yes, sir.

Q. Have you got all the invoices of goods here that were bought after the date of this assignment from anybody?

A. I don't think I have them all. I think some of them were lost.

Q. Did you keep a book of invoices after the assignment?

A. Yes, sir.

Q. Where is that book?

A. I do not know.

Q. Down to the hotel?

A. No, sir.

75 Q. I thought you said "at my room"?

A. I said, "I do not know."

Q. Where was it when you last saw it?

A. In the store at Forsyth.

Q. Where did you say?

A. In the store at Forsyth.

Q. Haven't you seen it since you have been there?

A. No, sir.

Q. Haven't you seen it in Mr. Granger's possession?

No answer.

Q. Haven't you seen it in the possession of James N. Granger?

A. Do you mean the book that has the invoice bills?

Q. Yes.

A. Oh, yes, sir; that is here in the court-room. You asked me if I kept an invoice book. I thought you meant a separate book in which I kept the invoices.

Q. That book is here, then, is it—the book where the invoices are pasted in?

A. Yes, sir.

Q. Have you ever added them up?

A. No, sir; I don't know as I have.

Q. Where is it, here on the table?

A. I don't know whether it is on the table or somewhere in the room.

Q. Don't you know where it is now?

A. It is back there in the seat where I was sitting before I came here, I guess, if it is not on the table.

Q. Did you keep all the invoices in that book as fast as they came in?

A. I think we didn't have the book until about a month or so after that assignment. We kept the bills on file and copied them into another book, a small book, about that long and that wide, what I call the invoice book, and in an order of goods sent to Noyes Bros. & Cutler ordered some two or three of those invoice books.

Q. Does this comprise substantially all of them?

76 A. Well, nearly all, I think.

Q. You say you have not added these up to see how many goods there were bought, eh?

A. No, sir.

Q. Did you say you had not?

A. I think not. Well, I think I added up what I could from Beaupre, Keogh & Co., and I find it does not tally with theirs, and I concluded part of their bills were lost. There are none in there for May from them, and their statement shows that I did buy some in May.

Q. Well, this is the book, is it?

A. That is the book; yes, sir.

Mr. WARNER: I would like the court to identify that book.

Book marked by the court Exhibit I.

Q. How much did you sell a month while you were there as assignee?

A. You mean on the average?

Q. On the average.

A. Well, somewhere from $800 to $1,000, I think, as an average.

Q. You can't tell how many goods you bought meanwhile?

A. Not exactly; no, sir; I think somewhere near—I can give a guess, but I don't know.

Q. I don't want you to guess about it. Well, now, if these goods were worth $5,000 I would like you to explain to the jury why you sold them for $550.

A. Because they had been attached, and whoever tried to get them had a lawsuit on their hands; worth considerable to recover them.

Q. Well, then, you didn't sell the goods, but you sold your claim to them. Is that what you mean?

A. Yes, sir; sold my claim or right.

Q. You regarded that as worth $550. Is that what you mean?

A. Yes, sir; thought that was a reasonable consideration under the circumstances.

77 Q. What did you do with the other $50?

A. Kept that as my commission.

Q. Commission on the sale?

A. On the sale. I had to have something to live on, didn't I?

Q. Mr. Winchester, your deposition was taken in this case, was it, a month or two ago?

A. I think there was a deposition taken about three weeks ago.

Q. Taken out in Montana?

(Witness nods assent.)

Q. Did you or did you not at that time say that Mr. Young stayed at this store about half the time after the assignment?

A. I think likely I said that, which is about the truth. He was there about half the time during that summer.

Q. Did you or did you not swear in the course of that deposition that you left Forsyth on the 22d day of December, 1883?

A. I think I said perhaps about the 22d. I don't think I swore positively, for I was not certain of the date then.

Q. Why did you fix it as of December 22d then?

A. Because that was the best of my recollection.

Q. Well, what has changed it since?

A. Some papers which I have seen since.

Q. What papers?

A. Especially the order on the station agent; that is the principal thing.

Q. That don't show you the day you left?

A. No, sir; but after seeing it I recollect that I did leave on the same day.

Q. Now, I ask you this: Why was it before you left there you employed a clerk, when you say in your deposition, "business being dull"—speaking of the time you left—"business being dull and one being enough to attend to it?"

78 A. Well, business was dull.

Q. Why did you employ a clerk when it was such dull business?

A. It was dull at the time I left. I employed him the first of November, when business was pretty good.

Q. Why didn't you discharge him?

A. Because he would work for less than I wanted to. He was willing to work, he said, for $50 a month, while I wouldn't work for less than $75 a month, and the aim of that was to cut down expenses.

Q. Was that the reason you left there and went to Miles City?

A. Yes, sir; that is the reason—one reason; that is the reason why I left him in charge. The other reasons I have already stated—there was no decent house to live in in Forsyth that I could get.

Q. What difference would it make to you about this cutting down expenses; it didn't cost you anything, did it?

A. What cost me anything?

Q. It didn't make any difference to you whether the expenses were large or small?

A. Why, only as I desired to get as much out of the business as I could to pay the creditors.

Q. You never made any demand on the sheriff for these goods yourself, did you?

A. No, sir; I think not.

Q. This transaction with Granger took place in January or February, 1884?

A. I think in the month of January it would not be, certainly.

Q. Did you bring a suit yourself for the value of those goods in February, 1884—on the 11th day of February?

A. No, sir; I did not.

Q. Didn't you so swear in your deposition in Montana? Well, in February, 1885?

A. Yes, sir.

79 Q. That was long after this suit was brought?

A. Yes, sir.

Q. So you sued the sheriff and Beaupre, Keogh & Co. out in Montana in 1885, claiming these goods for yourself, did you?

A. Claiming them as assignee.

Q. Did you swear to the complaint of that case?

A. I think so.

Q. (Paper handed witness.) I ask you whether or not that is the original answer that you made, to which your attention was called some time ago, and whether or not that is your signature.

A. That is my signature; I don't know about the answer; I couldn't tell unless I would read it. (After reading:) I think that is it.

Paper marked by the court Exhibit K.

Exhibit K offered in evidence by defendants' counsel.

Objected to by plaintiffs' counsel as irrelevant and immaterial.

The COURT: I don't see how that is cross-examination; he has not been examined as to the matter of this sale at all.

Exception by defendants' counsel.

Redirect examination:

Q. This last suit counsel called your attention to, brought out there in Montana, with reference to this matter—what was the character of that suit; a suit to recover the value of those goods or a suit to recover damages for the breaking up of the business, or what?

A. Well, the fact of the case was that by this party attaching re-

duced the value of the goods so that I had to sell them for about $550; their actual value at the time—that is, the goods in the store—was something like $6,000, to the best of my recollection; I sued to recover the difference between what they were worth and what I received for them.

80 Q. It was a suit for damages, then, to the business?

A. Damages to the business; yes, sir; breaking up the business.

Q. Now, this answer that you put in to the suit that was brought against you and Young was a suit in which the defendants, Beaupre, Keogh & Co., charged and swore that they had sold goods to you and Young, was it—sued you and Young?

A. I know they brought suit in that way.

Q. Against you and Young?

A. Yes, sir; one action; another against Young.

Q. Well, for the goods which you, as assignee, had ordered, they sued you and Young together?

A. Yes, sir.

Q. Charging that the goods had been purchased by you and Young?

A. Yes, sir; for all the goods purchased during the time I was assignee they sued in that way.

Q. They brought you out of that suit after awhile, didn't they, and went on and took judgment against Young?

A. Yes, sir; a year ago this spring.

Q. You claimed that you were not personally liable, but only purchased the goods as assignee and liable only as assignee?

A. Yes, sir; that is what I claimed.

J. N. GRANGER, sworn as a witness for the plaintiffs, testified:

Direct examination by Mr. GILMAN:

Q. Mr. Granger, did you make the purchase or negotiate the purchase of this stock of goods in question for the plaintiffs, Noyes Bros. & Cutler, from the assignee, Winchester?

A. I did.

Q. Was the purchase reduced to writing?

81 A. Yes, sir.

Q. (Paper handed witness.) Is that the instrument?

A. This is the instrument itself.

Paper marked by the court Exhibit L.

Offered in evidence by plaintiffs' counsel and received without objection. Exhibit L was then read in evidence by the witness, with the endorsement of filing and record thereon.

Q. What is the date of this?

A. The 15th of January.

Q. Where was this purchase made and this writing executed?

A. In Miles City.

Q. You were there at the time?

A. I was there at the time.

Q. Where were these goods at that time?

A. Well, I suppose they were at Forsyth. I never saw the goods.

Q. Had you been down to Forsyth?

A. No, sir; I never went to Forsyth at all.

Q. How did you happen to be there?

A. I went out to represent some St. Paul creditors.

Q. Had you heard of the goods being attached by the defendants before you went out?

A. I believe it was on the 10th or 11th of January that I first heard of the goods being attached; some four or five days previous to this; perhaps six days.

Q. Well, after this sale was made did you demand the goods?

A. I demanded the goods of the sheriff.

Q. Well, who was in possession of the goods then?

A. The sheriff of Custer county, Montana, claimed to be in possession.

Q. Is this town of Forsyth in Custer county?

A. Yes, sir.

Q. Is that the same county in which Miles City is?

A. Yes, sir; Miles City is the county-seat.

82 Q. The sheriff was in possession of the store and of the goods at that time?

A. The sheriff of the county I don't think was in the county that day, but the deputy sheriff told me he was in possession.

Q. Well, that is the same thing; and after this sale you demanded the goods of the sheriff?

A. The same day—that afternoon.

Q. Showing him your bill of sale—the purchase of them?

A. I served him a written notice.

Q. Have you got that written notice?

A. Yes, sir.

(Witness produces it.)

Q. You served that notice on him?

A. Yes; a duplicate copy, I believe.

Paper marked by the court Exhibit M.

The paper marked Exhibit M was then introduced in evidence by plaintiffs' counsel and read to the jury by Mr. Granger.

Mr. WARNER: I object to the witness reading the affidavit attached to the notice.

(By Mr. GILMAN:)

Q. Whose affidavit was that you were reading?

A. My own affidavit.

Q. And is that an affidavit attached to this notice?

A. Attached to the notice. I think, under the Montana statutes, an affidavit is required.

Mr. WARNER: The only object I have in objecting to it is that it might be excluded from the jury.

(By Mr. GILMAN:)

Q. It is a part of the notice that was served?
A. Yes; it is a part of the notice; at least I intended it to be so.

Mr. WARNER: It is objected to under the pleadings.
The COURT: I think I will not admit it at present. You may re-offer it hereafter if it should be material.

Q. Is there anything else, Mr. Granger, that you want to state?
83 A. No, sir.

Cross-examination by Mr. WARNER:

Q. You say you never saw this property at all?
A. No, sir.
Q. You didn't go out to Forsyth?
A. No, sir; I never was west of Miles in my life.
Q. How did you know how much there was of it?
A. From statements that were made to me by Mr. Winchester.
Q. Did you have these invoices?
A. Well, that inventory was had while I was in Miles, and I think it came into my possession or was shown to me before the bill of sale, though I am not sure. I didn't leave until the day after the bill of sale was executed.
Q. Well, your bill of sale that you have read covers all that was covered by the assignment. Did you buy the house and lot and all the rest of this for $550?
A. No, sir.
Q. How do you know what you did buy?
A. Well, I know that I bought the stock and the book accounts and the money due on book accounts and the notes and the counters and shelving, and, I think, some horses and teams. I have forgotten now.
Q. The bill of sale reads this way—you say you drew the bill of sale so as to read: "All and singular the personal property of every nature, description, and kind now belonging to me as such assignee, and within said Territory, which property consists, among other things, of the stock in trade in the store building at Forsyth, in said county, lately occupied and used by said Young as a merchant, and afterwards occupied by me as assignee aforesaid, including not only such of the trust property as was, by a certain deed of assignment of said Young to me as assignee, conveyed to me and is now in said store or in any way belonging to me, *and* also all other property which I have acquired as such assignee, either
84 through and with the proceeds of the sale of any of the trust property aforesaid or otherwise; also all the books and book accounts and notes belonging to me as such assignee and the money due thereon or to become due; also two horses, one buckboard wagon, all the counters, shelving, stoves, chairs, furniture of every kind and description, and all other and singular the personal prop-

erty now belonging to me as such assignee." Did you bargain for the whole outfit?

A. I bought the store and everything about it; that was my intention.

Q. And you never went and took an invoice of it?

A. No, sir. I didn't see that invoice, I think, at the time because I couldn't get any list of the property. The sheriff's inventory was not finished and I must have had that inventory handed to me the next day. I then made a general sale to cover everything up there at the store; that was my intention.

Q. Why did you put into the assignment not the amount paid, but this language, "for and in consideration of a large and proper sum of money." Why didn't you put in "$550"?

A. I didn't wish to. I didn't wish to make it public to Beaupre, Keogh & Co. at that time anything about it.

Q. Well, if it was an honest transaction, what was the objection to putting in the truth?

A. I simply did that way. It was the truth. I very often draw a bill that way.

Q. Did you leave out the words "$550" and put in "a large and proper sum of money" because you usually do that way?

A. No, sir. In this case I didn't care. I had to put it on record. I didn't care at that time to state exactly how much I had paid for it.

Q. Well, then, the question reverts. I say, if this was an honest transaction, why didn't you put it in and put it on record?

85 A. I didn't wish to at that particular moment.

Q. Why not?

A. Because I didn't care to have it known at that particular moment how much we had paid. I didn't know what would come of it.

Q. Why didn't you care to have it known?

A. Because it was too early in the matter and I didn't know what might come out of it, and, as a matter of precaution, I placed it that way.

Q. Well, was you going to take some different position about it at some other time and claim you paid more?

A. No, sir.

Q. Well, I don't, then, see any reason given why you didn't put in the truth then.

A. I have given you the reason exactly. I told you that I didn't desire at that particular moment to have publicly known how much I had paid for it until I returned to St. Paul.

Q. Well, then, I ask you why was it that you wanted to conceal that fact?

A. Simply a matter of prudence, that's all.

Q. Why was it a matter of prudence to keep from the public how much you paid for this property?

A. It was none of the public's business that I know of. It was a matter that I was conducting there. I don't know as it was neces-

sary for me to state the exact amount to the public, and I didn't choose to do it. It was simply a matter of precaution on my part.

Q. Did you actually pay him a dollar?

A. I paid $550 in the First National Bank of Miles City; paid in U. S. gold—in twenty and ten dollar pieces.

Q. Was it the understanding at the same time that it should be all sent back to where it came from?

A. No, sir.

Q. Did you have any talk with Mr. Winchester to that effect?

86 A. No, sir; I did not. I will tell you what I did have a talk with him, if you want.

Q. Go on.

A. After Mr. Winchester stated his price——

Q. He put the price, did he?

A. He finally put the price. I told him distinctly that I would not pay, of course, the full value of the goods, that I was buying a law-suit, and that he must fix the price in accordance with the fact that we might never get anything out of it. He said he must have something for his own services and I said he could take whatever he chose, and finally he said he would take $550, and I told him I would pay him that, and I drew that bill of sale and he executed it and put it into his pocket and I walked to the First National Bank there and paid him the money.

Q. Well, what business of yours was it to tell him how much he could take out of that $550 for his services?

A. I didn't tell him how much he could take out. I said he had a perfect right to take some out to pay himself.

Q. In point of fact it was sent back to the parties from whom it came, except $50, wasn't it?

A. No, sir; it was not. There was a dividend made to Noyes Bros. & Cutler; how much it was I don't know. I didn't see the dividend made and never saw the draft.

Q. Do you know what was done with the $550?

A. Only from hearsay.

Q. Well, what was done with it?

A. Mr. Winchester tells me that he put $50 into his own pocket.

Q. Well, there is $50, go on.

A. He told me that he made a dividend. I saw him afterwards.

Q. A "dividend" was it?

A. He made a dividend among the creditors of the balance.

Q. Well, go on and state how much he paid on each.

87 A. I don't know, sir. I didn't see the drafts and I had nothing to do with it at all. I was down the street with another gentleman after the transaction.

Q. There was a "divi" without any "dend" to it, wasn't there?

A. No, sir; it was not.

Q. Your sole object in taking that bill of sale was to lay the foundation for bringing a suit in the name of Noyes Bros. & Cutler, was it?

A. Only if they desired to bring it.

Q. You was acting for them, was you?

A. I was acting for Noyes Bros. & Cutler in the purchase of that property.

Q. Acting for anybody else?

A. No, sir.

Q. Did you ever buy a stock of goods before without seeing it and pay $550 for it?

A. No, sir.

Q. Or without going within 40 miles of it? Never was any of it delivered to you, was there?

A. The sheriff declined to deliver anything to me when I made my demand on him, and there never was anything delivered.

Q. When the sheriff got out of the store did you go and take possession—did you ever take possession of the property?

A. I have never been to Forsyth in my life.

Q. Did you ever try to dispose of any of this property, the real estate?

A. No, sir. I don't know whether Noyes Bros. & Cutler have or not. I had nothing to do with that except in regard to this action. I don't know what they have done.

Q. Did either of these parties turn over to you the book accounts?

A. I never have seen the books. I don't know where they are. At the time I was at Miles City they were in the sheriff's possession; at least he told me so.

Q. Didn't you see Mr. Young while you was out there at Miles City?

88 A. Mr. Young came down to Miles City the second day I was there. He was there that day and the next.

Q. Did he remain there until after this trade was made?

A. I think Mr. Young went back to Forsyth the night he came down, and came back the next day.

Q. Did Mr. Young remain there until after this trade was made—this assignment was made?

A. Well, I can't tell you whether the contract had been finished or the agreement had been finished between Mr. Winchester and myself before Mr. Young got there or not. Mr. Young never knew of the transaction until the papers were either drawn or signed. He never heard of the thing from me in any way, shape, or manner.

Q. Did he remain there at Miles City until after this assignment was made?

A. Well, I don't remember whether he went up that night or not. I don't remember whether he was in the city at the time the assignment was made or not. I can't tell you.

Q. Did you have any talk with him while he was down there?

A. With him? Yes, considerable; not about this sale, though, in any way, shape, or manner.

Q. What was the next thing that you did after you got this sale?

A. I went up and put it on record.

Q. Did you make the demand on the sheriff the same day?

A. Late that afternoon I made my demand on the sheriff; about 5 o'clock, I should think.

Q. Commence any suit while you were out there?

A. No, sir; not in this matter. I think that I carried out some papers for Mr. Heard in an entirely different matter.

Q. Well, I notice, Mr. Granger, in your demand that you allude to an attachment of Sig. Hanauer, a man that lives in Bismarck—"Hanauer and others," you say?

89 A. They had a third attachment.

Q. How did you come to put that in there?

A. Because they had a third attachment. Beaupre, Keogh & Co. had the first two attachments and Sig. Hanauer had the third.

Q. At the time this demand was made, then, the sheriff was holding three writs of attachments in these suits that are mentioned in the demand, was he?

A. Yes, sir; I believe he was.

Q. Have you never seen those books since?

A. No, sir, Mr. Warner, I have never seen those books, except two little petty cash books. I haven't the least idea where they are. I never have seen them at all.

Q. Did Mr. Winchester promise that they should be turned over to you?

A. No, sir; never.

Q. You have said that they were in the hands of the sheriff?

A. I said the sheriff told me he had them.

Q. Do you mean that?

A. Yes, sir. When I sat there in the sheriff's office the deputy sheriff told me he had the books up at the store at Forsyth. That is all I know about it.

Q. I suppose you have looked at his deposition. I think he testifies he never had them. Certainly, if he never had them he wouldn't tell you that, would he?

A. I didn't see the sheriff, Mr. Warner, you will please remember. I saw his deputy, in charge of the business at that time.

Q. Well, here is the deputy's deposition, here—Frank Conley.

A. I never saw Frank Conway in my life that I know of.

Q. Who was it that you did see?

A. James Conllins, I think it is. "The deputy sheriff of said Custer county" is the man I had my talk with. He said he was the head deputy. I supposed he was in charge of the business of the county. He had charge of the business at Miles City.

90 Q. Let me see where you get the name from. Do you mean to say there ever was a deputy sheriff of Custer county by the name of James Collins?

A. Well, I understood his name to be James Collins when he told me who he was. I never have seen him since nor before.

Q. Well, describe him.

A. Oh, I shouldn't know him if he came into this room. I spent about 20 minutes in the office with him.

Q. Can you tell whether he was a man of light hair or red hair?

A. No, sir; I have never thought of him since, from that time to this. I wouldn't know him.

(By the COURT:)

Q. Was this conversation in the sheriff's office there?

A. Yes, sir; in the sheriff's office in the court-house. I understood the sheriff to tell me his name was James Collins; I may have misunderstood him.

Q. Will you say that any deputy sheriff of that county ever told you that he had got those books?

A. The sheriff that I met there when I was talking about the thing said he had the books up at the store, or that the books were up to the store.

Q. But you can't describe the man that said that?

A. I shouldn't know him if he came into this room.

Q. You have had talks with Mr. Young since he has been here the last ten days, have you?

A. Yes, sir.

Q. Has he not, in the course of those conversations with you, told you that at the time of this attachment the account books of that concern were at his house?

A. No, sir.

Q. And that he sent them to Noyes Bros. & Cutler?

A. No, sir, never; he never told me any such thing in the world.

Q. Did you have any talk with him to the effect that he should send them to Noyes Bros. & Cutler?

91 A. Never, sir; I never mentioned anything to him about the book accounts. I would like to say, Mr. Warner, that on the back of this paper I find something in my handwriting, "J. R. Johnson, sheriff; James Conley, deputy." I drew this affidavit of service when I returned to St. Paul, and I have written in "James Collins;" I made a mistake in that thing.

By Mr. GILMAN:

Q. But the man you did have a talk there with represented himself as the man in charge of the office and the deputy sheriff?

A. In charge of the business of the county.

CHARLES YOUNG, sworn as a witness on behalf of the plaintiffs, testified:

Direct examination by Mr. GILMAN:

Q. You are the Mr. Charles Young, assignor of this property that has been talked about here, are you?

A. Yes, sir.

Q. How long have you been in the mercantile business? How long had you prior to the making of this assignment?

A. I think in the summer of 1879.

Q. Since the summer of 1879?

A. I commenced carrying mail and express and delivering par-

cels along the line of the Northern Pacific, and in the year 1881 I started a store at Centennial Butte. That was my first store.

Q. What kind of goods did you deal in there?

A. Everything that I could sell.

Q. Well, what was it?

A. There were drugs, ammunition, sewing machines, dry goods—it was a general stock—eggs and butter and fruit and newspapers.

Q. And groceries?

A. Yes, sir.

Q. Boots and shoes?

A. Boots and shoes.

92 Q. General stock?

A. I tried to have everything that I could carry?

Q. Well, how long did you continue in trade there?

A. Well, I can't say exactly. I think I was there two or three months, when I moved to Glendive.

Q. In the same business there?

A. Continued in the same business; yes, sir.

Q. How long did you remain there?

A. Well, probably three or four months more.

Q. Where did you go then?

A. From Glendive I went to a place called O'Fallan's Creek.

Q. Following up the construction of the Northern Pacific road?

A. Yes, sir. I followed it up from Mandan until the road got to——

Q. Well, when did you go to Forsyth?

A. I went there about a week after the end of the track had reached there.

Q. What year and month was that?

A. 1882, in June.

Q. You continued there up until the time you made this assignment?

A. Yes, sir.

Q. Well, from your experience did you know the value of such a stock of goods as there was there on hand in December, 1883, to the first of January, 1884? Did you know the value of the stock of goods then on hand that Winchester had?

A. In 1883?

Q. In December, 1883, and first of January, 1884.

A. Yes, sir; there was somewhere in the neighborhood of five thousand dollars.

Q. I am not asking you that, but I am simply asking you whether you were acquainted with the values of that class of goods.

A. Yes, sir; I was well acquainted with them; knew the cost of nearly everything.

93 Q. Did you assist in taking the inventory of the goods there in December, 1883?

A. Yes, sir.

Q. These books that have been put in evidence here, do you know those books; have you seen those before?

A. Yes, sir; Mr. Winchester's writing.

Q. You assisted in taking this inventory, did you?

A. Yes, sir; I did.

Q. How long were you taking the inventory, you and Mr. Winchester?

A. Well, we commenced about the first of December and continued taking it up, well, from the 10th to the 15th, probably, or 20th.

Q. At the time you took that inventory was there on hand in the store the list of goods taken in this inventory?

A. Yes, sir; every article was there.

Q. What were the prices carried out? How were those prices arrived at? What was taken as a basis to arrive at the prices at which they were carried out?

A. Well, if there was a bill of goods bought here, in St. Paul, we would take the bill that was received with the goods and add the freight to it and find out whatever the weight would amount to, and the freight added would make the cost of that thing, freight and cost added; that is what we valued the goods at.

Q. In other words, you took the cost prices with freight added?

A. With freight added.

Q. Could you tell about what proportion of that stock of goods then on hand consisted of the old stock that was on hand when you made the assignment in April and what proportion consisted of new purchases which had been made by Winchester?

A. I couldn't tell exactly. I had been away some of the time; but there was a good many more new goods than there was old. The cellar was full of new goods, nearly.

94 Q. Well, about what proportion of them would be new or old goods; would you estimate as nearly as you can?

A. Well, probably one-third would be old goods.

Q. Well, state what the value was of those goods that remained on hand up, say, until the first of January or second of January, 1884. What was the then market value of those goods as compared with the cost price and freight added?

A. Well, there was quite a difference on some things. On eggs and fruits, particularly, there would be quite a difference.

Q. Well, which way; how?

A. They would be worth a good deal more, for the simple reason you couldn't buy the goods there without paying a large price, and you couldn't ship them by freight in the winter; they would have to be shipped by express; and there was a difference in the freight rates on what goods we did get shipped by freight of from 30 to 40 cents on the hundred; I think about 35 cents difference on first class—that is, the rates were that much higher in winter.

Q. Freights had gone up?

A. Yes, sir.

Q. Well, take that entire stock as a whole; how would its actual market value on the first of January compare with the cost prices of the goods and freight added? Would it be more or less?

A. It would be more.

Q. Well, how much more—what per cent. more?

A. Well, I couldn't say exactly how much, but I know it would be more.

Q. State whether you were left in charge of the store at any time by Mr. Winchester in December.

Objected to as leading.

The COURT: State everything that passed between you and Mr. Winchester in reference to that matter.

95 (By Mr. GILMAN:)

Q. State what occurred with reference to what you had to do, if anything, in connection with these goods.

A. I was hired there as clerk, at $50 a month, the same as any man here would hire me for $50 and I would work for him for wages.

Q. When was that?

A. He hired me along about the 1st of November; somewheres in November.

Q. How long did you continue?

A. I continued until the store was attached.

Q. Until the goods were attached?

A. Yes; the second day of January.

Q. State whether or not Mr. Winchester remained there all the time; and, if not, state when he went away.

A. As nigh as I can recollect, he left there the afternoon or evening of the 20th of December.

Q. Where to go to?

A. To go to Miles City to visit his wife.

Q. Who remained in charge of the stock of goods from that time on up to the time they were attached?

A. I stayed there, sir, every day.

Q. Well, what did the sales amount to after this inventory was taken and up until the time of the attachment?

A. The actual sales?

Q. Yes; goods that went out of the store; goods that appeared on the inventory and were not there at the time of the attachment.

A. At the time the inventory was complete? Well, it was somewhere about five or six hundred dollars, I think; about $500, as nearly as I could get at it.

Q. That had been sold?

A. That had been sold.

Q. That went onto the invoice or inventory and were not there at the time of the attachment?

96 A. That had been sold since the invoice was taken.

Q. What became of the goods after?

A. It is a hard matter to tell what did become of them.

Q. Well, simply whether they were sold by the sheriff or not?

A. Well, they were sold at different times; sometimes the sheriff sold them and sometimes the man that was in charge sold them—that is, Mr. Anderson had charge of the store.

Q. Was that prior to the time they were sold on execution?

A. Yes, sir.

Q. Were you present at the time the sheriff came there and took possession?

A. Yes, sir, I was.

Q. What did he take possession of?

A. He took possession of the stock of goods, a buckboard, and a gray horse belonging to my wife.

Q. Well, about the books?

A. Well, he said "he would take charge of the store," is the way he put it.

Q. Well, did he do so?

A. Well, he asked me for the key. He said he would go out and get a man to take charge of the store, and he went out and brought a man in and put him in charge of the store, and asked me for the key, and I gave it to him.

Q. He took everything there was in the store there?

A. Yes, sir.

Q. Took charge of the store with everything that was in it?

A. Yes, sir.

Cross-examination by Mr. WARNER:

Q. Did he take the books or didn't he? Mr. Gilman has asked you two or three times and you somehow or other evaded it.

97 A. Well, I suppose he took everything; I don't know what he took; he didn't mention the books. He says, "I'll take charge of the store," and he took charge.

Q. Well, did he actually take charge of the books, or didn't he?

A. I don't know whether he took them or not; he didn't at that time.

Q. Were they in your house or in the store?

A. They were in the store when he took charge of the store.

Q. Do you know what became of them?

A. I don't.

Q. Do you know what became of them?

A. No; I suppose I could tell where they were.

Q. What's that?

A. I could tell where the books are.

Q. Where are they?

A. They are out in Montana somewhere.

Q. Where are they?

A. Well, I decline to answer.

Q. Has anything been collected on them since that levy?

A. Which levy do you refer to?

Q. Has there been anything collected on those books since that levy, since the sheriff took possession of the store?

A. Well, yes; there has been a few dollars.

Q. By whom?

A. By me.

Q. What did you do with it?

A. Well, I paid off some small bills with it, and paid some of it to Mr. Winchester, and used some of it myself.

Q. How did you find out how to collect this money without the books?

A. I knew pretty near who owed around there.

Q. What is that?.

98 A. I knew. Some of the parties there offered to pay me and I didn't refuse the money.

Mr. WARNER (to the court): Well, if the court please, I submit that the witness ought to answer that question.

The COURT: Well, he says that he knew some of the parties that owed him.

Mr. WARNER: No; the witness declines to answer the question as to what became of those books. (To the witness): Where are the books, Mr. Young?

(No answer.)

The COURT: Answer the question, Mr. Young.

WITNESS: The books is in Miles City.

Q. In whose office or house?

A. Well—(no further answer).

Q. Can't you tell?

A. Yes, sir; I could tell.

Q. Well, I understood the court to tell you to tell where the books were.

A. I told you they were in Miles City.

Q. Well, in whose office or house?

A. I don't know as I am supposed to answer that question.

Mr. WARNER: I submit the question to the court.

Mr. GILMAN: I don't know as it is of any consequence, one way or the other.

Mr. WARNER (to Mr. Gilman): I object to your making that statement in the presence of this witness.

Mr. GILMAN: I don't know anything about the books—don't care anything about them.

The COURT: How do you claim it is material?

Mr. WARNER: They were never in the sheriff's possession. He has had them ever since.

Mr. GILMAN: I don't care anything about these books one way or the other. We have offered no proof whatever to show that they realized anything on the book accounts or that they were

99 worth anything, and don't propose to offer any evidence of that kind. We don't claim anything on account of the books or book accounts; nothing but simply the stock of goods.

The COURT: I don't see how it is material, then.

Mr. WARNER: Well, the court save us an exception.

Q. Well, now, Mr. Young, you were not there at the store all that summer; you was in Livingston or the park?

A. Yes, sir; I was at Livingston.

Q. Didn't you take some of these same goods out at the park?

A. I was at Livingston and at Helena. What's that?

Q. Did you take some of these same goods from Forsyth at any time that summer?

A. I was in the park and I ordered some goods from Mr. Winchester.

Q. Did you take some of these goods from this store in Forsyth out to the park?

A. No, sir.

Q. Did you have any of them shipped out to you there?

A. I had a few; yes, sir.

Q. How many different times?

A. Well, I couldn't remember; it was not twice or three times, I think.

Q. Did you start a store or place of trade in the park?

A. No, sir; I didn't have a regular place; I was employed by the company there and I had——

Q. Did you have a store or place of business in Livingston that summer anywhere?

A. No, sir.

Q. What became of the goods that were sent out there to the park?

A. They were sold.

Q. By whom?

A. By me.

Q. Have you got an invoice of the goods that went there?

100 Mr. GILMAN: I submit that this is not proper examination.

Q. You say you did take some of these goods out to the park and sold them?

A. No, sir; I didn't say I took some of these goods out. I wrote to Mr. Winchester and he sent me some of those goods when I was in the park.

Q. Now, I ask you have you got a copy of the invoice of the goods that were sent out there. Have you got any book or anything that will show?

A. No, sir. I don't think I have. I haven't here.

Q. How long were you out there at the park selling these goods?

A. Well, I think I went in June or July of 1883, I think, and came back to stay in November or came back to visit in November.

Q. Then you were at the park from some time in July until you returned to visit?

A. Yes; with the exception of, I think, I was back some time in July.

Q. What were you doing while you were there in the park.

A. Well, I was hired as clerk in a store, and I also had the privilege of selling butter and eggs and fruit in the store. They gave me that privilege. They kept fruits principally.

Q. You say none of these goods were taken to Livingston?

A. No, sir; none.

Q. Do you know that of your own knowledge?

A. I know that all the goods that I ordered I ordered to the park. I ordered none to Livingston.

Q. Well, did they go from Forsyth to Livingston and then from Livingston to the park?

A. Well, they would have to go that way.

Q. They went through that way?

A. Yes, sir.

101 Q. Now, you say you came back from the park some time in November; then you hired out to Mr. Winchester at $50 a month, and you stayed there then at this store in Forsyth until after the sheriff took it?

A. Yes, sir.

Q. Isn't it a fact that he removed from Forsyth to Miles City and never intended to come back?

A. No, sir; I expected him the next week.

Q. Hadn't you written to Messrs. Beaupre, Keogh & Co. before that asking them what they would take for their claim and let you go back and run the store yourself, or words to that effect?

A. Yes, sir; I think I did write something to that effect.

Q. That was before Mr. Winchester went off to Miles City, wasn't it?

A. Yes, sir; I think so. I think I wrote something. I ain't sure.

Q. What was in your mind at that time?

A. Well, my mind was that I had some money coming to me that I thought——

Q. I was talking about the way you was going to run this business. What was your plan?

A. To get rid of Beaupre, Keogh & Co.

Q. You had got tired of them, had you?

A. Yes, sir; heartily tired of them, and always will be.

Q. Well, they had got tired of you?

A. Yes, sir; and good reason for it, I guess.

Q. You hoped at that time to take this stock back into your own hands and have nothing to do with Winchester, did you?

A. No, sir; I wanted to get rid of Beaupre, Keogh & Co. I wanted to pay them off.

Q. You proposed to have this assignment discharged and done away with, didn't you?

A. Not with them as my creditors.

102 Q. Well, if you had settled up with them you would have done away with the assignment, wouldn't you?

A. Well, I don't know; I might have.

Q. Was that in your mind?

A. I can't tell you what was in my mind; a good many things.

Q. Was that one of the things that was in your mind?

A. I don't know exactly.

Q. But you had written them that letter. You sent off Winchester to Miles City, didn't you?

A. No, sir; Mr. Winchester put me in; hired me as clerk.

Q. Well, at the same time he hired you as clerk didn't you tell

him that the amount of business that he had done there—he was only putting you in a worse situation than he was when the assignment was made and you told him to "get"? Wasn't that it?

A. No, sir; I told Mr. Winchester I thought that there ought to have been more of the accounts paid off; that was all.

Q. Well, you found that the business was in a worse situation than it was at the time of the assignment, didn't you?

A. No, sir; I don't know as it was. I might have thought so before the inventory was taken, but the inventory showed up better than I thought it would.

Q. Didn't you write to Beaupre, Keogh & Co. that you couldn't pay 25 cents on a dollar if it was forced?

A. Well, it didn't. You forced it, and how much did you get out of it? I guess I told the truth.

Q. (Letter shown witness.) Did you send them that letter?

A. That is my writing, sir.

Exhibit E (being the letter identified by the witness) offered in evidence.

Objected to as incompetent, irrelevant, and immaterial. Objection overruled.

103 The letter was then read in evidence by Mr. Warner as follows:

"DECEMBER 11TH, 1883.

Beaupre, Keogh & Co.

GENTLEMEN: In answer to yours of Dec. 6th I beg you to state, in the absence of Mr. Winchester, who has gone away for a few days on business, that I am somewhat surprised at that statement which I found by chance to-day. It is somewhat of a surprise to me, as I have been away most all the summer season in the park, and as Mr. Winchester has sold a large amount of goods this season I can't see why he owes you so much, as I firmly believe the man to be honest and has done his best to do right, but I know if I could have done business he has I could have paid you at least one-half of the old account and kept the new one straight. I am afraid he has trusted out too much, and I know at present he is unable to collect a dollar, and there is not a dollar to spare. Our sales do not amount to much at present, and we would not be able to raise the amount to pay that in a long time. I wish you would send me a statement of what he owes you to date on his account. It is useless to call on him for money, for he has none, and if he had you would get it without asking him, as I intend to look around a little myself after business. I am in hopes to be able to do something for you. You must not expect too much, as business is very dull at present and no prospect of being any better this winter. I have some money coming to me that I earned this summer, and if I could get that I would make you a remittance at once, but as I cannot get it I find myself without a dollar. I will see Mr. Winchester in a day or two, when he comes back, and we will write you in regard to this matter, if he has not already written. I think with proper management we ought to be able to pay you dollar for dollar of what we owe you. If compelled

to sell out it would not pay you 25 cents on the dollar.
104 Please write and send me statement at once, and when Mr. Winchester comes I will tell him. I have written to him. I am sorry to have to write you this way, but I am confident if the business had been handled properly there would have been no need of this.

Yours respectfully, CHARLES YOUNG."

Q. Now, Mr. Young, this is the letter I have called your attention to. Wasn't it a fact, at the time you wrote this letter, that you had taken charge of this business yourself?

A. No, sir.

Q. And that you didn't want Beaupre, Keogh & Co. to know it?

A. Positively, no, sir; I am under oath now and I say positively, no.

Q. Did you see Mr. J. H. Garlock the day after the sheriff's sale of these goods?

A. I think I did.

Q. Did you have a talk with him about this transaction?

A. No, sir; not to my knowledge.

Q. Where was the talk?

A. I saw him on the street two or three times and he wanted me to go in and talk to him in his office. Mr. Winchester was with him on the street and I told him there was Mr. Winchester, the assignee, to talk to.

Q. Do you know Boswell's Hotel in Forsyth?

A. Yes, sir.

Q. Sitting in front of that hotel, did you have a talk with Mr. Garlock—in the bar-room of that hotel did you have a talk about what you were doing at the time this letter was written?

A. At what time did Mr. Garlock talk with me?

Q. The next day after the sheriff's sale, last winter.

A. The day after the sheriff's sale I remember having some conversation with him—yes.

105 Q. Did you, at the time, tell him that you was dissatisfied with the way Winchester had run the business, and that you had come back there to take charge of it yourself?

A. I was dissatisfied with the result of it, as I wrote in my letter to Beaupre, Keogh & Co., which you hold in your hand.

Q. Did you tell him you had come back to take charge of the business yourself?

A. No, sir; I did not.

Q. You swear you didn't?

A. Yes, sir.

Q. If you did tell him that, you would remember it?

A. I think I would; yes.

The COURT: You say "the day after the sheriff's sale." When was that?

Mr. WARNER: That would be the 25th. The sale was on the 24th of December, 1884.

WITNESS: I remember telling Mr. Garlock if the goods had been

sold at that time I could have got $2,500. I took charge of the store under Mr. Winchester's orders. I admit that far.

Q. Well, I have not asked you for that. What did you do with the proceeds of the goods that were sold at the park?

A. Well, I haven't got pay for them all yet. I paid Mr. Winchester for about all I got from him.

Q. What did you do with the proceeds of the goods that were sold in December, before the levy?

A. I gave a hundred dollars in December—before the attachment, you mean? I gave somewhere in the neighborhood of a hundred dollars to Mr. Winchester. I paid several bills, and, as I had no way of living, I used some of the money myself.

Q. The money that was handed to Mr. Winchester was really handed to Mr. Burley, wasn't it?

A. The money was demanded by Mr. Winchester and no other man.

106 Q. Wasn't it sent to Mr. Winchester to give to Dr. Burley as attorney's fees?

A. I don't know.

Q. Have you got the letters that he sent out for it?

A. No, sir; I have not.

Q. You don't remember what the letter said?

A. No, sir.

Q. Why didn't you send him the whole?

A. He didn't ask for it. He only asked for a hundred dollars. He asked for that amount and he got it.

Q. Did he tell you what he wanted it for?

A. Well, I think he said he wanted to defend the case or something of that kind.

Q. Was that after the attachment?

A. Yes, sir. I think I saw him in Miles when he asked me for it.

Q. Mr. Young, after this assignment did you send any money to Bohrer & Hulsick, of this city?

A. I received a check of somewhere in the neighborhood of $800.

Q. Did you send it to Bohrer & Hulsick?

A. I turned it over to Mr. Winchester and told him at that time that I had been paying money to Beaupre, Keogh & Co. and promising Bohrer & Hulsick money, and that I had agreed to send them this money. I had wrote and told them before this assignment—I had agreed to send them some money that I expected from the railroad company—money that I had worked for.

Q. Well, did you send that check to Bohrer & Hulsick?

A. Yes, sir; I sent it by Mr. Winchester's orders to Bohrer & Hulsick.

Q. You have got in all the alleged conversation between you and the other man. I ask you the naked question, "You sent that check to Bohrer & Hulsick?" and you say you did.

A. I can't say positively, but it went there.

107 Q. Have you seen the letter that went with it since you have been here?

A. No, sir; I don't know who wrote the letter.

Q. How long after was it that you sent it?

A. It was shortly after the assignment. I can't recollect exactly the date.

Q. Within a week or two?

A. Well, I think it was; I can't be certain.

Q. Did you after that assignment also send to Beaupre, Keogh & Co. $115?

A. Yes, sir.

Q. Mr. Young never made a dividend under that assignment until after the sale to Granger, did he?

A. I sent that by Mr. Winchester's orders.

Q. Mr. Winchester never to your knowledge made any *pro rata* dividend among creditors, did he?

A. Well, I don't know whether he did or not.

Q. I said to your knowledge?

A. To my knowledge he didn't; but he calculated to pay everybody.

Q. But he never declared any dividend to your knowledge?

A. Not to my knowledge; no.

Q. After the assignment was made the business went on and payments were made to just the same ones as before, were they not, so far as you know?

A. I haven't much reason for knowing after I left there.

Q. Well, up to the time you did leave, in the middle of June, wasn't that the way it went?

A. Well, I couldn't say. I don't know hardly what his business was—what money he sent to the parties.

Q. Wasn't you in the store every day?

A. While I was there.

Q. Do you mean to say you don't know whether he did or not?

108 A. Well, I don't exactly; but I suppose he sent money where he thought it was most needed.

Q. But he didn't make any dividend?

A. Not to my knowledge, I told you.

Q. Did he make any similar payments to anybody else that you remember of?

A. Not to my knowledge; no, sir.

Q. This seven or eight hundred dollar check you speak of was money that was due you at the time of the assignment?

A. Yes, sir; due me from the Northern Pacific for services rendered.

(Redirect examination by Mr. GILMAN:)

Q. How many of these goods did you order out to the park—how many of them were sent out to the park on your order?

A. Well, I don't know; I think there might have been $50 or $75 worth. I don't think there was to exceed that, to the best of my knowledge.

Q. This $115 that you sent to Beaupre, Keogh & Co. after the assignment, where did that money come from?

A. Well, I don't know. I think that was services rendered to the Northern Pacific. I think it was.

Q. Did you consult with Winchester about sending them? Was that sent under his orders?

A. Yes, sir; it was all done. I done nothing without consulting him.

Q. These goods that were sent to the park, did you pay Winchester for them?

A. Yes, sir; I sent him money from the park. I think there might have been a little balance due Winchester.

Q. You say you sent this money to Bohrer & Hulsick, or did Winchester send it?

A. I can't recollect. I know I got the check. The check
109 would not be delivered to any one but me. I believe that was the way of it—from the railroad company—and I handed the check to Mr. Winchester and told him the circumstances regarding Bohrer & Hulsick.

Q. Well, did you get the check before or after the assignment?

A. It was got after the assignment, I think.

Q. Then you turned it over to Winchester and told him the circumstances?

A. Yes, sir.

Q. About Bohrer & Husick?

A. Yes, sir; I owed them the most. I hadn't ought to have owed them so much.

Q. You don't recollect, you say, who wrote the letter and enclosed a check to them—whether it was you or Winchester?

A. No; I don't.

Q. Well, if you did it, did you do it on your own motion or through directions of Winchester?

A. It was with Winchester's consent.

By Mr. WARNER:

Q. Did you write the letter that contained the check?

A. I say I don't know, sir; I cannot remember.

C. A. WINCHESTER, recalled by Mr. WARNER for further cross-examination, testified:

Q. Did you ever declare any dividend under that assignment before the one you declared after the sale to Granger?

A. No, sir.

Q. At the time you sent the $100, or whatever it was, to Beaupre & Keogh, did you send a corresponding amount, *pro rata*, to any other creditor?

A. Not at that date, no, sir. I paid the money out just as I could get it in.

110 Q. Was there or was there not, to your knowledge, a corresponding amount to the $800 that was sent to Bohrer & Hulsick sent to any other creditor?

A. No, sir; there wasn't that amount sent to any other creditor at any one time. Their claim was about $1,000 at that time, I think, or $1,100; and, furthermore, I will state right here I never sent them any more during the season. I tried to work this up to get them up even, as near as I could—that is, I didn't send them any more on the old account, I mean; I bought some goods of them.

Q. Did you have anything to do with sending that $800?

A. I can't say whether I wrote the letter or not, but Mr. Young and I had a talk about it and he said he wanted that to go to them. I asked him why: "Well, because he had made some special arrangement or agreement with them that that particular money should go to them."

Examined by Mr. GILMAN:

Q. How much did you pay to the old creditors of Young altogether?

A. Somewhere in the neighborhood, I think, of $1,500 or $1,600; perhaps more.

Q. You didn't make any regular *pro rata* formal dividend?

A. No, sir; I did not.

Q. But when you had money sent it around about as you thought it was right?

A. Yes, sir; my intention was to pay every man every dollar, and I didn't think it necessary to make a regular *pro rata* distribution; didn't know it was necessary at that time.

Q. You thought every one would be paid in full?

A. Yes, sir; and so they would if they had left us alone.

Court here adjourned until 10 o'clock a. m. to-morrow.

111 C. A. WINCHESTER, recalled on behalf of the plaintiffs, testified:

Direct examination by Mr. GILMAN:

Q. Can you state now, Mr. Winchester, how you divided up that $500—to whom you sent it?

A. Yes, sir.

Q. Just state to whom you sent it and the amount to each.

A. Noyes Bros. & Cutler, $165.16; Campbell & Burbank, $38.03; C. Gotzian & Co., $56.92; Lindekes, Warner & Schurmeier, $71.17; Bohrer & Hullsiek, $168.72.

Q. Is that all?

A. Yes, sir.

(By the COURT:)

Q. How much is that altogether?

A. $500.

Q. From whom of the creditors of Young did you make purchases as assignee besides the defendants?

A. From Messrs. Bohrer & Hullsiek, Campbell & Burbank, C. Gotzian & Co.; I don't think I bought any of Lindekes, Warner & Schurmeier.

Q. Well, whom did you buy of?

A. I bought of some who were not creditors of Young—who had not been creditors.

Q. Can you state about what amount you purchased altogether, aside from the goods you purchased from the defendants?

A. I can't say exactly; at least, I think, $3,000 worth during the summer; perhaps four. I have no figures by which I can tell exactly, only from a general idea of the business.

Q. In selling out to Noyes Bros. & Cutler the stock of goods had Mr. Young anything to do in that negotiation?

A. No, sir; not to my knowledge.

Q. Was he present at the time the negotiations were made?

A. I don't think he was; in fact, I know he was not. The
112 negotiation was made—that is, the agreement, terms of sale, was made—in the house where I was living at the time, in my front room. Mr. Granger was there. Mr. Young, I think, was not in town.

Q. Did Mr. Young pay you for the goods that you sent to him when he was out to the park?

A. He paid me for nearly all of them. I think there was a small balance of perhaps ten or fifteen dollars yet due.

Q. What was the amount of the entire quantity you sent to him out there?

A. Something less than a hundred dollars; perhaps $75 or $80.

Q. What kind of goods were they?

A. Well, they consisted principally of a damaged lot of clothing, boots and shoes, some hats and caps—in fact, they were some of the old stock, poor stock, that we could not sell in Forsyth.

Q. The poorest part of the stock that you had?

A. Yes, sir; I so considered it—the poorest that we had.

Q. Something that you could not work off there?

A. Yes, sir; at least I hadn't been able to in four months' time.

Q. What did you send them out to the park for if they were damaged goods and unsalable?

A. He thought he could sell them out there.

Q. Sell them to the tourists, eh?

A. I presume not; probably sell them to workingmen who were out there—that class of goods. I don't know to whom or what he sold them.

Q. How did you get at the parties to whom $500 was paid when you couldn't testify to it yesterday?

A. I have been to see them this morning.

Q. You got at this from their books?

A. Yes, sir.

113 Q. Did you find out at the same time how much of that money they furnished themselves?

A. I asked them no questions about that, sir.

Q. You was not interested in that?

A. No, sir; that is not my business; that is their own private business.

Q. How much was the claim of Noyes Bros. & Cutler?

A. I think in the neighborhood of $700; a little more than $700, I think.

Q. Under the new bills, you mean, or the old bills?

A. Well, I think that was their claim——

Q. Well, I want to know how much the claims for goods sold, not for legal services or attorney's fees or anything like that. I want to know how much it was for goods sold.

A. Goods sold to me and Young, too?

Q. Yes.

A. About $700.

Q. How do you know?

A. I think their statement shows it. I think I had a statement of theirs.

Q. Have you got it with you?

A. No, sir; I think we can produce their books, however, if you want.

Q. How much was it for Campbell & Burbank?

A. $165 and some cents.

Q. Gotzian & Co.?

A. I don't recollect the figures exactly; somewhere about $200, I think; a little over $200.

Q. Lindekes, Warner & Schurmeier?

A. In the neighborhood of $350.

Q. And Bohrer & Hullsick?

A. I don't recollect their claim. I haven't seen the figures recently. It was seven or eight hundred dollars.

Q. Their original claim was about a thousand, wasn't it?

A. About $1,100, I believe, at the time of the assignment.

114 Q. $1,079.47?

A. I presume those are the figures. I know I had it in my mind that it was about $1,100.

Q. Out of that $800 had been paid, had it?

A. What are you reading from—the assignment?

Q. This is the original assignment.

A. No, sir; the $800 had not been paid then.

Q. At the time you sent this money back, away long in January, 1884, the amount, $1,079, named in this assignment had been paid to the extent of $800, hadn't it—to within a week of this assignment, wasn't it?

A. I think so; within a week or two.

Q. Well, that left that $279 on the old account, didn't it?

A. I suppose so; I haven't figured it up.

Q. You say this bargain was made in the front room of the house where you was living?

A. Yes, sir.

Q. Who was present there?

A. Mr. Granger and myself.

Q. Anybody else?

A. No, sir.

Q. Where was Dr. Burley?

A. I couldn't say.

Q. Did you see him about it?
A. No, sir.
Q. Was he your attorney at the time?
A. Yes, sir.
Q. In the day-time or in the night time?
A. It was in the day-time.
Q. Was there a branch of this store kept at Livingston?
A. No, sir.
Q. Had there ever been a branch of it at Livingston?
A. There were some goods there at the time of the assignment, so Mr. Young told me, that he had sent up there in the fall before, of which a brother of his, I believe, had charge or had an interest in.

115 Q. That was not a branch of this store kept at Livingston at the time of the assignment?
A. Not that I know of.
Q. Never heard of that?
A. No, sir; no branch; these goods Mr. Young told me were in charge of his brother, and his brother was to sell them and to share in the profits or something that way. I never saw the goods.
Q. What become of that store?
A. I don't know.

C. P. NOYES, sworn on behalf of the plaintiffs, testified:

Direct examination by Mr. GILMAN:

Q. Mr. Noyes, you are one of the plaintiffs in this action?
A. Yes, sir.
Q. Member of the firm of Noyes Bros. & Cutler?
A. Yes, sir.
Q. At the time that Mr. Young made this assignment in April, 1883, how much was he indebted to your firm?
A. I shall have to refer to a statement. (Witness looks at memorandum:) $595.06. That is in May, 1883. It was $18.65 less than that. I see there is one credit of cash dated August 10 on this statement; that would make it $575.41.

By the COURT:

Q. The question was as to the amount at the time of the assignment.
A. The assignment was in May, 1883, wasn't it?

Mr. GILMAN:

Q. When was that $18.65 paid?
A. August 10, 1883; that is the only payment on this statement after the assignment.
Q. That was due, then, at the time of the assignment. I was asking the amount due at the date of the assignment.
A. $576.41.

116 Q. Did you make sales to Mr. Winchester, the assignee, after the assignment?

A. Excuse me, Mr. Gilman, I didn't understand that the assignment was in April; I thought the assignment was in May. Our statement made here runs to August 10.

Q. Well, the assignment was in April.

A. We received on May 14 a hundred dollars; so that it would be $476.

Q. Well, I was getting at the amount that was due on the 27th of April. That is the date of the assignment; you have stated that.

A. $713.71. We received after that a hundred dollars.

Q. Wait a moment; I will ask you about that; $713.71—that is the amount due at the date of the assignment, April 17, 1883?

A. Yes, sir.

Q. Now, what payments were made on that account?

A. May 14, $100.

Mr. WARNER: Well, stop for half a minute. I wish to ask the witness a question to see whether he knows anything about these matters at all. I don't suppose C. P. Noyes knows anything about it except by bare hearsay.

Mr. GILMAN: You know from your books, don't you?

A. Yes, sir.

The COURT: I suppose a man is supposed to know something about his books.

WITNESS: I have the books here to confirm the statement, if you prefer the books.

Q. I want to know whether you sold goods to the assignee. Did you sell goods to Winchester, the assignee, after the assignment?

Mr. WARNER (to the witness:) Only state what you know of your own knowledge.

A. Yes, sir.

Q. State under what circumstances the account was opened with Mr. Winchester.

117 A. We refused to sell him after the assignment, and wrote him so, as assignee, unless we had full report from him of the condition of affairs by inventory and statement, and so on, and he wrote back to us——

Mr. WARNER: Well, let us see the letter.

Mr. GILMAN: No matter about that. State what you did.

A. After receiving the letter in which he referred us——

Mr. WARNER: One minute; you needn't state the contents of the letter.

By Mr. GILMAN:

Q. State what you did.

A. After receiving the letter we made inquiries of the parties he referred us to.

Q. Who were they?

A. Beaupre, Keogh & Co. and Bohrer & Hullsick.

Q. Well, state what occurred between you and Beaupre, Keogh & Co.

A. I sent one of our men to Beaupre, Keogh & Co. and Bohrer & Hullsiek both.

Q. Did you get any written communication from Beaupre, Keogh & Co.?

A. No, sir; verbal.

Q. Who did you send?

A. William Noyes.

Q. Where is he?

A. He is here in the room.

Q. Well, then, I will have to call him if the counsel objects to your statement. Do you object to that?

Mr. WARNER: Certainly.

Q. You did go on and sell after that to the assignee, did you?

A. Yes, sir.

Q. To what amount?

A. We appear to have sold to him $311.49 from our books.

Q. Now, I wish you would state the circumstances under which you purchased this stock from the assignee, Winchester.

Mr. WARNER: Was you there?

118 A. Yes, sir.

Q. In Miles City?

A. Oh, no; not Miles City; no.

Mr. WARNER: I object to the witness stating.

Mr. GILMAN: State who you sent up there to look after your interests in connection with this stock of goods.

A. Granger.

Q. This bill of sale that has been put in evidence of this stock of goods from Granger to you, state whether Mr. Granger delivered that over to you when he returned.

A. Yes, sir.

Q. What did your firm do with reference to the matter then—approve or disapprove of the purchase of the goods?

A. We approved of it.

Q. State what transpired then between you and your firm and the other creditors of Young with reference to your having purchased this stock of goods.

Objected to as immaterial unless plaintiffs' counsel proposes to connect Beaupre, Keogh & Co. with it.

Mr. GILMAN: No. What I propose to prove is this: That when Mr. Granger returned and reported that he had purchased this stock of goods, etc., of them they ratified the purchase and then called together—in point of fact Mr. Granger represented, when he went up there, all these other creditors, but after he returned they called together the creditors here. Of course not Beaupre, Keogh & Co., because they had gone up and attached. They called together these other creditors, and the plaintiffs, Noyes Bros. & Cutler, then proposed to them that any and all of the other creditors that chose to come in and contribute their proportion of the expense necessarily

incurred in vindicating their right to these goods, if any of the other creditors should do it, then what should ultimately be realized by these plaintiffs in the suit to recover the value of the goods should be divided equally between the creditors so as to carry
119 out the terms and provisions of the original assignment, so that all the creditors should share the same as they would under the assignment, each bearing his proportion of the expense.

Objected to because it is immaterial and because it appears by the reply in this case that the common law is expressly adopted in that territory.

The COURT: I hardly think the evidence is material in the present aspect of the case. It may possibly be proper in rebuttal hereafter.

Q. Mr. Noyes, do you know anything about a suit that was commenced about the same time that Beaupre & Keogh commenced theirs against these parties by Hanauer & Co., of Bismarck?

A. I knew nothing of it at the time; I have heard of it since.

Q. What became of that claim?

A. Our attorney came——

Mr. WARNER: I object to that as immaterial and inadmissible under the pleadings.

The COURT: I don't think that is material.

Mr. GILMAN: Well, I offer to show that the suit of Hanauer & Co., that was spoken of, commenced against Young was dismissed and never went to judgment and that none of the goods were ever sold in that suit.

Objected to as not pleaded and immaterial. Objection sustained, and exception by plaintiffs.

Cross-examination by Mr. WARNER:

Q. That is a copy of your account that you have been reading from, is it?

A. Yes, sir; this statement was taken from our books January 12, 1884, at the time I sent Mr. Granger up there.

Q. Is that a complete statement of all the items?

A. It is a complete statement up to January 12, 1884, of all items on both accounts; up to the day Mr. Granger was sent to Montana. That is the statement we gave him to take with him.

120 Q. Have you got your books here?

A. Yes, sir.

Q. Please turn to the ledger containing this account. (Witness turns to the ledger.) In this matter of the Charles Young account (commencing April 1st, 1882) I see you have got on May 14 a $100. Have you got the letter that enclosed that $100?

A. I think I have; yes, sir. It is among the correspondence.

Q. Let me see it, please.

A. Here is the letter inclosing that hundred dollars.

Q. In whose handwriting is it?

A. That is Mr. Young's handwriting, I think. I am not sure whether that is, Mr. Warner. I don't know. It is, I am sure.

Letter introduced in evidence and read to the jury as follows:

FORSYTH, *May 1st*, 1883.

Noyes Bros. & Cutler, St. Paul.

GENTLEMEN: Inclosed find check for one hundred dollars, to apply on account. I have made an assignment to C. A. Winchester in favor of my creditors and hope to continue business as usual. I have made the assignment to protect all my creditors, and Mr. Winchester is a business man and will pay dollar for dollar all I owe, only I wish a little time, as business has been quite dull. Hoping you will favor us with your goods as formerly at the lowest rates and fill the following order, I remain,

Yours respectfully, CHARLES YOUNG,
For C. A. WINCHESTER, *Assignee.*

Letter marked N.

Q. I see on August 10, cash, $18.65. I ask you why it was you didn't pass that up to the credit until May 14.

A. Because we didn't get it until May 14.

Q. Do you mean you didn't collect the check?

121 A. No, sir; I think the date of the letter was May 14; received and answered on the 14th day of May. The order was refused.

Q. You say that is the 7th?

A. It looks to me like the 7th. It may be the 9th. We received it on the 14th and answered it on the same day.

Q. Do you find that $18.65?

Mr. GILMAN: I want to interpose an objection to these matters as immaterial and irrelevant and save an exception.

Witness produces a letter.

WITNESS: We refused to sell except for cash. There are several orders here, all of which cash accompanied the orders.

Q. Were goods bought by these Forsyth parties right along after May 1st as before from your firm?

A. Before they had all been credited and after the assignment we refused them credit. We sold them several bills for cash. We afterwards gave them credit.

Q. The Charles Young account starts in here?

A. Starts in May, 1882.

Q. Well, there is May 14, is it?

A. Yes, sir.

Q. On the 16th——

A. We did fill that order for Charles Young; that small order.

Q. That is on the 16th of May?

A. On the 16th of May, and then we stopped. I don't find anything more charged to him until August.

Q. Then it was a mistake when you said that order was refused?

A. No, sir; we refused, and he sent money and we sold him right along for two months.

Q. Then it was a mistake when you said that order was refused?

A. No, sir; we refused, and he sent money and we sold him right along for two months. We finally gave him credit, after we had made inquiry of other parties to whom he referred us;
122 opened the account again with Winchester after two months. We first commenced to charge to Winchester in August. The last of Young is in May—May 14th—but during that two months there are several orders here with the money accompanying them, because we would only sell for cash.

Mr. WARNER: Here is another letter, containing the second remittance, that I offer in evidence as a part of the cross-examination.

Objected to as immaterial and irrelevant. Objection overruled.

Letter marked by the court Exhibit O and read to the jury by Mr. Warner as follows:

"FORSYTH, MONTANA, *August* 6, 1883.

Noyes Bros. & Cutler, St. Paul, Minn.

MESSRS. The goods per last order came to hand all right a few days ago, but already I find we need several more things, so send you herewith a small order and check for $59.58 to pay up the last bill and apply the balance either on the old account or on the enclosed order, just as you like. If you can give us thirty days on this bill it will enable us the easier to pay for same; hope to be able to apply something on old account in September, but cannot promise anything definitely. Collections are slow, and I have not yet been able to dispose of very much outside property. It is going to be slow work, but I think we will get there in the end.

Respectfully yours, C. A. WINCHESTER,
Assignee of Chas. Young."

Q. Now, one more question, Mr. Noyes. Neither of these bills show the division of what you got out of that $500?

A. No, sir.

Q. What did you put it to the credit of?

A. We credited it up to expense account.

Q. Did you put it to either of these accounts?

A. No, sir; we received this before we heard from Mr. Granger. We had paid Mr. Granger's draft for some six or seven hundred dollars, and before we had any advice of it we received this, be-
123 fore we had any word from Mr. Granger, and our cashier credited it up to the same account on which he charged the disbursements that had been made. We didn't know what to charge it to until we had some settlement with Mr. Granger.

Mr. Warner read another letter in evidence as follows:

"MILES CITY, MONTANA, *January* 15, 1883.

Noyes Bros. & Cutler, St. Paul, Minn.

MESSRS. Please find enclosed a draft on St. Paul to your order for $165.16, less exchange, on account of Chas. Young matter.

Yours truly, C. A. WINCHESTER, *Assignee.*"

The letter was marked by the court Exhibit P.

Q. You say you honored the draft you speak about and charged that to what account?

A. We had charged the money given to Mr. Granger, when he started out, to a special account with Mr. Granger for that trip, as is our custom.

Q. Well, that wasn't $700, was it?

A. No; the draft for $700, my impression is, was not paid until some days after this. I am not sure about that.

Q. Have you got here the advice of that draft?

A. No, sir. I don't know but what Mr. Granger may have it.

Q. Did you ever see it?

A. I have seen the draft itself.

Q. Did you ever see the advice that came with it?

A. We got a telegram from Mr. Granger, I think, before the draft was paid, telling us what he had done, and saying that he would be home, and I think we saw Mr. Granger as soon as we paid the draft. I am not quite sure.

Q. Was the advice by letter or was it verbal?

A. Verbal, I think.

Q. Now, go on and tell us what you charged that $700 to.

A. Charged it to Mr. Granger.

124 Q. It remains charged to him to this date?

A. No, sir; that was transferred to an account later—of all the disbursements with reference to this Young matter.

Q. Where is that account?

A. That account is not upon our country ledgers, but upon our special ledger—personal account.

Q. You were subpœnaed to bring all your books into court, wasn't you, pertaining to this matter?

A. I didn't understand it so. I supposed it was only the accounts of Charles Young and C. A. Winchester. We can produce that account if you wish in a very few minutes.

Q. Did you credit that same account with this $165 and some cents?

A. Yes, sir.

Mr. Warner offers in evidence document marked by court Exhibit Q as a part of the cross-examination. Received subject to the same objection as before and exception of plaintiffs' counsel. Marked by the court Exhibit "Q."

Redirect examination by Mr. GILMAN:

Q. (Paper shown witness.) Was that the draft Mr. Granger drew on you?
A. Yes, sir.
Q. For this?
A. Yes, sir.
Q. You paid that draft, did you?
A. Yes, sir; we paid that draft on January 17th.
Q. Out of your own money?
A. Yes, sir.

Draft marked by the court Exhibit "R."

Q. That was the draft he drew upon you to pay for the stock of goods?
A. And the expenses. He had a letter of credit to draw what he needed.

The COURT: This is for $600. You spoke of a draft of $700.
125 WITNESS: Well, I didn't remember the amount. I knew it was more than the amount he paid for the stock of goods.

Draft objected to by defendants' counsel as immaterial.

The COURT: What is the date of that draft?
Mr. WARNER: January 15, 1884.

(By Mr. GILMAN:)

Q. Did you receive this draft from Mr. Granger?
A. It was arranged by a letter of credit from our bank to the bank there to honor the draft of his on the Merchants' National Bank and charge to our account. That was the substance of the letter of credit.
Q. And you paid this draft?
A. We paid the draft. It was charged to the account of Noyes Bros. & Cutler on the account of the Merchants' National Bank and was paid by us.

The draft was then read in evidence as follows:

"$600. MILES CITY, MONTANA, *January* 15, 1884.

"On demand pay to the order of myself $600, value received, and charge the same to the account of letter of credit number 68.

"(Signed) JAMES N. GRANGER.

"To Merchants' National Bank of St. Paul, Minnesota.

"(Endorsed across the face:) Noyes Bros. & Cutler; paid January 17, 1884. (Noyes Bros. & Cutler stamp.) (Endorsed on the back:) James N. Granger. (Farther endorsement and stamped:) Pay F. A. C. Moore, cashier, or order, for collection account of First National Bank, Miles City, Montana. R. E. Stower, cashier."

Q. (Paper handed witness.) Did you receive that telegram from

Mr. Granger, and is that the first advice you received from him after he went up there?

A. Yes, sir; we received that.

Telegram offered in evidence and received without objection. Marked by the court Exhibit S and read to the jury by Mr. Gilman, as follows:

"JAN. 15, 1884.

Dated Miles City, Montana, 15th; received at St. Paul 4.43 p. m.

126 To Noyes Bros. & Cutler:

Got bill of sale of everything to you. Holbrook wants me to see Brown in Mandan. Send full statement there to-night.

J. N. GRANGER."

Q. Subsequent to the receipt of that telegram and before Mr. Granger got back himself did you get that postal from him?

A. Yes, sir.

Q. Do you know the date you received it?

A. Yes, sir; we received that on the 18th day of January, 1884.

Postal card, marked by the court Exhibit T, offered in evidence by plaintiffs' counsel.

Objected to as immaterial. Objection sustained.

Counsel for the plaintiffs offers in evidence a paper marked by the court Exhibit U, being demand made by Noyes Bros. & Cutler upon the defendants for these goods.

Objected to by defendants' counsel as unnecessary.

The COURT: I think I will receive it.

Plaintiffs rest.

Counsel for the defendants moves to dismiss the action upon the ground that the plaintiffs have established no claim. Upon the evidence as it stands, fairly construed, this assignment was fraudulent in fact, because it was made with an illegal intent.

After argument the court overruled the motion, and defendants excepted to the ruling.

Mr. Warner then opened the case to the court and jury on behalf of the defendants.

Counsel for the defendants offers in evidence a certified copy of the record in the case of Beaupre, Keogh & Co. against Charles Young.

127 Objected to as incompetent, irrelevant, immaterial. No objection to the form of the certificate. Objection overruled and the record received.

Mr. WARNER: With the consent of the court and counsel I will only call attention to the date and when the judgment was rendered, and not read it. The complaint is dated January 2, 1884; verified on same day; then follows undertaking on attachment and affidavit for attachment. The next thing in the record is the demurrer, put in on January 7, 1884; the next thing is the writ of attachment,

issued on the 2d day of January, 1884, for $683.91; then comes the sheriff's return of the levy; date of the levy, January 3, 1884. (At the request of Mr. Gilman, Mr. Warner read the sheriff's return.) Then, on the 15th of April, 1884, at a regular term of that court, this demurrer came on to be heard and was overruled, and on May 10th judgment directed for the plaintiffs and entered for the sum of $754.93 and $250 costs; then follows a memorandum of the costs; then follows the writ of execution, issued on the 10th of May, 1884, for the sum of $754.93 and $270 costs; then there was an *alias;* last *alias* is on the 25th of September, 1884; then follows return of the sheriff on the execution.

Mr. Gilman specially objects to the return of the sheriff as being incompetent, irrelevant, and immaterial on the question of value. Objection overruled.

The return was then read to the jury by Mr. Warner.

Mr. WARNER: I next offer in evidence certified copy of the judgment-roll in the case of Beaupre, Keogh & Co. against Charles Young and Clarence A. Winchester.

Same objection as last above.

Mr. WARNER: The complaint in that case was for $931.41 balance. Filed on the same date. The next is the writ of attachment and the sheriff's return on them.

Next comes the summons undertaking on attachment and affidavit for attachment; then comes demurrer, dated Jan. 7,
128 1884; then comes Clarence A. Winchester's answer, which has already been read to the jury; then a demand was made for a copy of this account, and that was served, and that comes next; then comes a memorandum for costs; then there is an order overruling the demurrer and granting judgment, and entry of judgment on May 10, 1884. Attached to this is a copy of the account. It is a fact that this record shows that the first judgment that was entered was entered against Charles Young; never answered in this case. After the demurrer was overruled he let judgment be taken against him of default, and the suit was dismissed as to Clarence A. Winchester. Then comes affidavit of Frank Keogh, sworn to on the 19th of September, 1884. Following that is the affidavit of Mr. Garlock. On that the court opened the judgment, continued the levy in force, and it culminated in a judgment.

The court, after reciting the case, says (Mr. Warner here read the findings of the court): We have procured a certified copy of the inventory taken, which was referred to in the record just offered as Exhibit A, attached to the record in the case of Sig. Hanauer against Young.

Counsel for the defendants then read in evidence the deposition of Frank Connelly.

The following question in said deposition—you may state what you did as deputy sheriff of the county of Custer upon the delivery to you of said two writs—was objected to by Mr. Gilman as not the

best evidence and incompetent, which objection was overruled, and the answer was read to the jury.

The following question in said deposition was objected to by Mr. Gilman as incompetent, irrelevant, and immaterial, which objection was overruled, and plaintiffs' counsel excepted: State what you did upon making this levy and what conversation, if any, you had with any person in possession of the property at the time of making the levy. The answer to said question was then read to the jury.

Counsel for the defendants then read in evidence, without
129 objection, the deposition of Thomas Alexander; also the deposition of Geo. S. Taylor; also the deposition of Charles W. Anderson.

FRANK KEOGH, recalled as a witness on behalf of the defendants, testified:

Direct examination by Mr. WARNER:

Q. Mr. Keogh, after you got the first two letters, to which your attention was called yesterday, what steps, if any, did you take with regard to your account—the account of Beaupre, Keogh & Co. against Young? I say when you got the first two letters, one from Winchester and one from Young, in the spring of 1883, what steps, if any, did you take with regard to the claim of Beaupre, Keogh & Co.?

A. I don't remember taking any after that.

Q. Well, you don't understand what I mean by "steps," probably. Did you correspond with anybody about it?

A. Well, previous or about that time I had been corresponding with Strivell & Garlock.

Q. Did you receive any report from them regarding this assignment?

A. Yes, sir.

Q. Was it by letter or verbal?

A. Letter.

Q. Can you find the letter?

A. I don't think I can unless it is in that correspondence there. I don't think it is. I didn't succeed in finding it, not the one I went to hunt.

Q. Well, did you find the report they made to you? Have you hunted for their letter in which they reported on that?

A. Yes, sir.

Q. Did you find their letter, did you say?

A. No, sir.

Q. Well, have you looked in every place where such a letter would be kept?

130 A. Yes, sir.

Q. State whether or not the letter is lost.

A. The letter is lost so far as I know of. I didn't succeed in finding it.

Q. Have you made a thorough search in your own letter files?

A. Yes, sir; and not only myself, but I had the men search for it.

Q. What were the contents of the letter?

Objected to as incompetent, irrelevant, and immaterial. Objections overruled, and plaintiffs excepted.

Q. I ask you, Mr. Keogh, whether or not after you got these first two letters, the one from Young and the other from Winchester, that your attention was called to yesterday, you referred the matter to Strivell & Garlock.

A. My memory is a little more clear on that subject now, I can give it more in detail. The first report of that assignment came through the commercial agency. I then sent the account to Strivell & Garlock, or, if I did not enclose the account, I requested them at the time to look the matter up and report.

By Mr. GILMAN:

Q. That was before you got any letter?

A. That was before any letter came, and on receipt of their reply, which in substance was that the assignment on its face was apparently regular, then, if my memory serves me right, either advised them just merely acknowledging the receipt of the letter, or if I had sent the account there I had it returned.

By Mr. GILMAN:

Q. Well, was that before or after you got the letters?

A. Well, the letters had come in between times.

Q. The Winchester and Young letters?

A. And the Young letters; that is my recollection of it. They sandwiched in between my information through the agencies and the letters to Strivell & Garlock.

By Mr. WARNER:

Q. That is, you got your first intimation through the commercial agencies?

131 A. Through the commercial agencies.

Q. Then you referred the matter to Strivell & Garlock?

A. To Strivell & Garlock.

Q. Before you got their report you got these letters?

A. They came sandwiched in; yes, sir.

Q. Now, had you at any time during the period from April 27, 1883 (the date when this assignment was made), and the time that you sent your claims out there for collection, any knowledge that Mr. Young and Mr. Winchester were carrying on a regular business there together?

A. No, sir.

Objected to as incompetent, immaterial, irrelevant, leading, and assuming a fact that does not exist and never did exist.

The COURT: I think he may ask him as to what knowledge, if any, he had as to the mode in which business was conducted there by those parties.

Mr. WARNER: Well, take that for a question, then, Mr. Keogh, as to the way the business was being conducted.

A. Well, I suppose—I had no reason to doubt but what it was being conducted by Mr. C. A. Winchester without regard to Mr. Young or anybody else.

Q. Well, this farther question: State what knowledge, if any, you had as to whether or not they were carrying on—they or either of them—a business there in the ordinary course of trade the same after this assignment as before.

A. Do you mean selling and buying on credit and selling on credit and doing a general business?

Q. Yes, in the usual course of trade.

A. No, sir; I supposed they were closing the estate up, or, rather, I supposed Mr. Winchester was closing the estate up as assignee.

Q. State whether or not you received from Mr. Young or from Mr. Winchester, at any time, any communication enclosing any dividend under any assignment.

A. No, sir; not as a dividend.

Q. Did you at any time receive any money on the old account?

132 Objected to as leading.

The COURT: Ask what moneys were received and in what manner.

Mr. WARNER: I ask him if he received any money on this old account other than these two sums that are mentioned.

Mr. GILMAN: That he has stated on his examination when on the stand before.

The COURT: I think he stated on a former examination what moneys had been received; that is my recollection.

WITNESS: Yes, sir; I think I did—that is, you mean as to the payments of the one hundred dollars and the $115. That was asked and stated before.

Q. State whether or not you did some time in 1883 make out the accounts against Winchester and the accounts against Young and send them to anybody for collection.

A. Yes, sir.

Q. About when was that?

A. My recollection of it was some time in December.

Q. Of what year?

A. The year succeeding the failure; 1883, I think.

Q. Well, the assignment was made——

A. Well, it is the same year, December of the same year, 1883.

Q. Who did you send it to?

A. Strivell & Garlock, Miles City.

Q. What brought that about?

Objected to as immaterial and irrelevant.

The COURT: I hardly think that is proper.

Exception by defendants' counsel.

Q. Did you receive any letter, either from Mr. Winchester or Mr. Young, shortly before sending the accounts to Montana?

A. Well, some time before that—I think it was in September—I received a letter from Mr. Young and also one from Mr. Winchester; I don't know but what Young's was in July, but Winchester's was in September.

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Q. Had you any personal acquaintance with either of those men before they appeared here in court?

A. It seems not; my first impression was that I had met Mr. Young, but it seems that I was mistaken in that; Mr. Winchester I had never met.

Paper handed witness.

Q. Is that one of the letters received from these parties?

A. Yes, sir.

Q. At or about its date, shortly after its date, in the usual course of mail?

A. Yes, sir.

Paper handed witness.

Q. Well, is that another?

A. Yes, sir.

Paper handed witness.

Q. Is that another?

A. Yes, sir.

(Paper handed witness.)

Q. Is that another?

A. Yes, sir.

Q. (Paper handed witness.)

A. Yes, sir.

Q. (Paper handed witness.)

A. Yes, sir.

Q. (Paper handed witness.)

A. Yes, sir.

Q. (Paper handed witness.)

A. Yes, sir.

(Paper handed witness.)

Q. In whose handwriting is that?

A. Charles Young's.

Q. I see there is no date to it; is that the way it came?

A. Apparently.

Marked by the court Exhibit V.

(Paper handed witness.)

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Q. Is that another?

A. Yes, sir.

(Paper handed witness.)

Q. Is that another?

A. Yes, sir.

(Paper handed witness.)

Q. And still another?

A. Yes, sir.

Mr. WARNER: If the court please, I offer this correspondence in evidence.

Mr. GILMAN: For what purpose is it offered?

Mr. WARNER: One purpose is to show that C. A. Winchester in carrying on his correspondence about his business generally did not assume to be assignee.

Mr. GILMAN: What difference does it make whether he did or not?

Mr. WARNER: Didn't pretend to be.

Mr. GILMAN: Does this embrace all the correspondence during that summer?

A. I think that, in connection with letters that are attached to those orders, does.

Q. Embraces all the letters that you received?

A. That I remember of. I don't know; there may be some more. I don't know of any more.

Mr. WARNER: I offer, if the court please, these letters; also the one that the court has already marked V.

Letters marked from 1 to 11, inclusive, and read to the jury.

Q. You stated yesterday, Mr. Keogh, in regard to when you first derived knowledge that these parties were buying goods from other parties, and referred to the fact of Bohrer & Hulsick then. Is that the letter that you referred to yesterday (handing witness letter)?

A. Yes, sir.

Q. I show the witness the book that was identified by the
135 witness yesterday as invoice book that was kept in the business. I ask you whether or not you have examined the bills pasted into that book.

A. Yes, sir.

Q. In looking through those bills do you find them billed to Clarence A. Winchester or Clarence A. Winchester, assignee, or to Charles Young, or to whom?

A. They are billed to C. A. Winchester, assignee; C. A. Winchester, and to Charles Young.

Q. And pertaining to the dates following this assignment and before the attachment?

A. Yes, sir.

Q. Well, state how it is in proportion. Are there as many billed to one as to the other, or how is it?

A. Well, the majority of them. I couldn't say as — the whole. There is a very large number of them billed to C. A. Winchester without any tail to it; C. A. Winchester individually.

Q. How is it about the goods billed to Charles Young?

A. Do you mean the number of them?

Q. Yes.

A. There is a good many of them here. June, 1883—there is another bill about the same date that the party billed to. They cut the top off. It don't show who bought it. June 14, 1883, Charles Young, Forsyth, Montana. That is a dry-goods house.

Q. State the general fact whether or not between April 28, 1883, and the date of the attachment, when the business was closed up, there are many bills found in that invoice made direct to "Charles Young, Forsyth"—bills of merchandise.

A. Yes.

Mr. GILMAN: I object to that. That is no way to prove anything of that kind. The bills will show for themselves.

(By the COURT:)

Q. What bills are they?

WITNESS: They are miscellaneous bills.

The COURT: Do you propose to put the book in evidence in connection with this testimony?

136 Mr. WARNER: Well, I did not. They can cross-examine and identify the particular bills. To lumber up the record with that book is a thing I seek to avoid.

Mr. GILMAN: I object to it as immaterial. It is not the witness' book nor one that belongs to his house at all.

Mr. WARNER: I don't object to the book going with it, except that it lumbers up the record. Of course the bills will show for themselves what the witness states, but I want to show the fact that there is in the invoices bills to Charles Young as well as to Clarence A. Winchester, and a very large number of them. I want to show that as a fact by itself.

The COURT: I think I will allow it in connection with the book.

The COURT: Did you add up the number of the bills to Charles Young on your list?

A. No, sir; I did not. I simply noted the variations in the billing, that is all.

Q. Can you tell by your memorandum how many there are addressed to Charles Young?

A. No, sir. I could in about two or three minutes, by examination.

Q. Did you or did you not add up all the invoices that are there?

A. No, sir. I assisted in adding them up; at least I called while another party figured them.

Q. You and Mr. Lawrence, during recess?

A. Yes, sir.

Q. What was the total addition of the bills?

A. I don't remember. I have it there on a memorandum (witness looks at memorandum); $6,095.36. That included all—both Young and Winchester and Winchester as assignee.

Cross-examination:

Q. How did you make out your bills?

A. C. A. Winchester, assignee.

137 Q. Are not some of your bills just simply "C. A. Winchester," without "assignee"?

A. I noticed them; simply a clerical error in, for instance, this one. I don't know whether that has been erased or not; it shows an erasure. There is two of them.

Q. Well, some of the bills were made out just in the name of C. A. Winchester alone?

A. There were two of them made out in that way, being what is known as back orders. The original order, when the goods are filled, the stuff not being in the house, they are transferred onto what is known as a back-order book, but in the recopying of them the "assignee" was apparently left out. The original order had the word "assignee."

Q. They were charged to him as assignee?

A. Yes, sir.

Q. If you got an order from him signed C. A. Winchester, without the addition of the word "assignee," it was charged up to him as assignee?

A. Yes, sir.

Q. All the same, wasn't it?

A. Yes, sir; well, we had no other account but "C. A. Winchester, assignee."

Q. The mere fact that the word "assignee" was not attached to his name when he wrote you didn't make any difference in the account; you understood that he was acting as assignee?

A. We supposed that he was acting as assignee until we found out different.

Q. The first intimation that you had in regard to this assignment you say you got from your mercantile agency?

A. Yes, sir.

Q. Then, before you had heard anything from Winchester or Young you sent your account to your attorneys up to Miles City to investigate the matter?

A. That is my impression.

138 Q. Before you had heard from them you got these two letters—one dated May 1st, from Winchester, and one May 7th, from Young?

A. I think they sandwiched in. The dates are so very close together there that I couldn't positively say. That they were sandwiched in, however, is my impression.

Q. After getting those letters you sent and ordered your account back, did you, from your attorneys?

A. Yes, sir.

Q. And then you went on selling goods during that season, as you have stated. There were some ten letters read in evidence here that were written to your firm by Mr. Winchester during that season, making remittances and ordering goods, etc., and to which he did not attach the name of assignee to the letter. Those remittances were credited up to the assignee account?

A. Yes, sir.

Q. You received about the same number of letters during that time that have not been offered in evidence where, in signing his name, he added the word "assignee," didn't he?

A. Yes, sir; I suppose so; don't know how many; there are some.

W. H. BUTLER, sworn and examined on behalf of the defendants, testified:

Direct examination by Mr. WARNER:

Q. Where do you reside?

A. St. Paul.

Q. What is your business?

A. I am a salesman in Beaupre, Keogh & Co.'s.

Q. How long have you lived here and been in their employ?

A. I was born here. I have been in their employ since January, 1880.

Q. Were you out at Forsyth last winter?

A. Yes.

139 Q. To attend the sheriff's sale of the property in controversy?

A. Yes.

Q. Were you present at that sale?

A. Yes.

Q. About how many people were present at that sale?

A. Well, I should judge, from twenty to thirty.

Q. How large a place is Forsyth?

A. Well, there is, I think, ten or twelve houses there and possibly from fifty to one hundred people; somewheres in that neighborhood.

Q. And you say there was about twenty-five or thirty at this sale?

A. Somewheres in that neighborhood.

Q. Was the property sold in bulk or was it sold in parcels?

A. Well, the sale was started selling in parcels, and after continuing on that way for about an hour it was all sold in bulk.

Q. Do you know why it was changed from parcels to selling it in bulk?

A. One reason was, I think, that the goods were selling very slowly. That is the only thing that I could see, and we wished to get rid of the whole thing as quick as possible.

Q. About how much was sold in parcels, in value?

A. Well, I believe what was obtained from it was somewheres along twenty or thirty dollars.

Q. And then the rest was sold as a whole?

A. As a whole; yes.

Q. Who became the purchaser of that?

A. I bought the goods.

Q. At what price?

A. $600, I believe, was the figure.

Q. Was the property there where everybody could see it?

A. Yes.

Q. What did you do with it?

140 A. Sold it.

Q. To whom?

A. To Alexander.

Q. A merchant there in Forsyth?

A. Yes.

Q. How long have you been engaged in trade yourself?

A. In the house that I am with?

Q. Well, engaged intrade either with yourself or for anybody else. Is that your first experience, do you mean—when you went to work for them?

A. No; I was in the grocery business before—four or five years, I should judge.

Q. Did you say you was a traveling salesman for them?

A. No; house salesman.

Q. Salesman in their house here?

A. Yes, sir.

Q. Have you any judgment as to the value of goods other than groceries?

A. Well, no; I couldn't make a correct estimate on anything outside of groceries.

Q. Can you tell the aggregate value of the groceries that were in this stock?

A. Yes. By figuring them over I could make a very close estimate as to what they are worth.

Q. Well, about what were they worth, in your judgment?

A. Well, I didn't estimate the groceries by themselves. I took the entire stock, and I should judge them to have been worth about eleven to twelve hundred dollars.

Q. What did you get?

A. $1,100.

Q. Was that shortly after the sheriff's sale?

A. It was the same day or the day following.

Q. Were all of these goods that were sold by the sheriff in the same room or were there some down-stairs?

A. Well, there was a part of them in the cellar and there was a part in the room partitioned off in the rear, and the remainder in the general room.

141 Q. Was there any shed at the rear?

A. Well, that is what I speak of—this shed; the second room off.

Q. You have already given the size of that building. I ask you whether it was scantily filled or was stuffed with goods.

A. Well, there seemed to be quite a quantity of goods there. The shelves seemed pretty well filled up.

Q. Were shelves along each side of this main store-room?

A. Yes.

Q. On those shelves—was it dry goods on both sides or on one side?

A. Dry goods on one side and boots and shoes; on the other were groceries and drugs and crockery.

Q. You can state what the size of that room was, to the best of your judgment.

A. About 20 by 35, I should judge.

Q. What were the goods that were down-stairs in this place—in the cellar?

A. There were some canned goods—bacon and pork and lard, I think.

Q. In what condition was this property?

A. It was apparently in good condition. I didn't make a very close examination of it, and I couldn't say only from a mere passing glance at it.

Q. Did you see either Mr. Winchester or Mr. Young while you was there?

A. I seen Mr. Young.

Q. Was he there at the sale?

A. He was there at the sale; yes.

Q. Mr. Winchester was not there?

A. Not to my knowledge. I didn't know Mr. Winchester.

Cross-examination by Mr. GILMAN:

Q. For whom did you buy these goods in?

142 A. For Beaupre, Keogh & Co.

Q. And you sold them for Beaupre, Keogh & Co., did you?

A. Yes, sir.

Q. You were simply acting as their agent there?

A. Yes.

Q. A few goods were offered separately and sold to the amount of twenty or thirty dollars, you think?

A. Somewheres in that neighborhood.

Q. And then the entire stock was just put up in a lump and sold?

A. Yes.

Q. How long had you been there before the sale—before the day of sale?

A. We came in, I think, either that morning or the previous morning.

Q. Did you take any pains to examine the stock of goods before they were offered for sale?

A. I went through it; just took a casual look at it.

Q. Just a casual look, as you would take walking through the store?

A. No, a little more; examined a little closer than that.

Q. Did you overhaul the goods?

A. No.

Q. Did you purchase and sell a horse or two horses?

A. Yes.

Q. How many—one or two?

A. There were two horses, I believe, and a colt; I think there was three altogether.

Q. What they called a buckboard?
A. Yes.

Mr. WARNER: If the court please, I object to this testimony under the pleadings; there is nothing said about it.

The COURT: Were those included in the amount of this sale for which you gave this $600?
WITNESS: These were not included in that sale.

143 Q. Were they sold separate?
A. Yes.
Q. Did you purchase them separately from the general stock of goods?
A. Yes.
Q. Were they sold before the general stock or after?
A. They were sold, I think, before the general stock.
Q. Were they sold separately—the horses?
A. Yes; the horses—no, the three horses, they were sold together—separately.
Q. Each horse separately?
A. Yes, sir.
Q. Did you buy them all in?
A. Yes, sir.

Mr. WARNER: Well, I repeat my objection, that this is inadmissible under the pleadings; they have not brought any suit for these horses or the buckboard.
The COURT: Well, I don't know that that is material.

Q. How was it about the counters in the store; did you purchase those and sell them?
A. There was nothing stated about counters—nothing in particular stated one way or the other. I suppose they were included as a part of the stock.
Q. There was nothing said when the stock was offered—nothing said about the counters and shelving?
A. I don't recollect of anything being said about it.
Q. Well, when you sold did you sell the counters and shelving along with the stock?
A. Well, I can't say as to that; I may have done so; I don't recollect.
Q. Does this price at which you say you purchased the stock of goods include also what you bid in the horses and buckboard for, or was that separate?
A. Do you mean the price at which I sold?
Q. No; the price at which you bid in the property.
A. No, that didn't include those.
Q. What did you sell those horses for?
144 A. The horses; I sold them with the stock of goods; I sold them altogether.
Q. You sold them with the stock of goods?
A. Yes, sir.

Q. What did you pay for the horses when you bought them in?
A. Somewheres from forty to fifty dollars.
Q. For all three of them?
A. Yes; I think the exact figure was $42.
Q. Did that include the buckboard?
A. No.
Q. Well, what do you think the horses were worth?
A. I don't think they were worth any more than that, if they were worth the amount.
Q. Anybody else bid on the stock of goods but yourself?
A. Yes; there was one other bidder, I believe.

Redirect examination by Mr. WARNER:

Q. Were you there at any time before this sale?
A. Yes; I was there about five days before that time, I believe.
Q. At that time how long was you there? Did you take an inventory?
A. I was there about twenty-four hours, I guess. I took an inventory.
Q. On that occasion were those goods overhauled and an inventory made of them?
A. Yes.
Q. (Paper handed witness.) Is that the inventory that you made?
A. Yes; that is the inventory.
Q. Well, then, at that time you went through the stock. Who helped you do that?
A. There is three others helped me.
Q. Who helped you?
A. There is George Star, George Taylor, and Thomas Alexander.
145 Q. In selling this property to Alexander, was that a cash sale or a credit sale?
A. It was sold on time.
Q. Well, short or long?
A. Two, three, or four months, I believe, or one, two, and three; either one of them; I think it was two, three, and four months.
Q. Now, about these horses. Your attention has been called to some horses that were there sold at $42. Were they blooded stock or scrub stock?
A. I couldn't say as to that. I am not judge enough.
Q. Well, I mean were they fine horses or were they common horses?
A. They were very common horses.
Q. You say it was all you thought the horses were worth?
A. Yes; it was all I think they were worth. I think it was more than they were worth.

JAMES H. GARLOCK, sworn on behalf of the defendants, testified:

Q. Where do you reside?
A. Miles City, Montana.

Q. And have lived there since when?
A. Since the spring of 1879.
Q. A member of the firm of Strivell & Garlock:
A. Yes, sir.
Q. What is your business?
A. Attorney-at-law; doing a general law business there.
Q. Did you read your law here with Bigelow, Flandrau & Clark?
A. No, sir; I was admitted to practice in Detroit, Michigan, in 1875. That was before I came to St. Paul.
Q. Well, you formerly resided in St. Paul?
A. Yes, sir.
Q. Engaged in the practice of law here?
146 A. I was not engaged in the practice here for myself. I was in the office of Bigelow, Flandrau & Clark at that time for about a year, I think it was; that was in 1878 and 1879.
Q. Do you know Mr. Beaupre, Keogh & Co.?
A. I am acquainted with Mr. Keogh and Mr. Broderick. I think I never met Mr. Beaupre.
Q. Do you know Mr. Charles Young and Clarence A. Winchester?
A. Yes, sir.
Q. State whether or not you made any investigation of this assignment in the spring of 1883, shortly after it was made, at the instance of Beaupre, Keogh & Co.
A. There is a letter which came to our hands. I think I received it personally myself, addressed to the firm of Strivell & Garlock, some time in May, 1883, saying that they had——

Mr. GILMAN: Well, I object to that. Produce the letter.
Mr. WARNER: It cannot be found.
WITNESS: I haven't the letter.

Q. You needn't state what the contents of the letter was, but what you did.
A. Upon receiving that letter I made an examination of this assignment, and which was recorded, or the record of it in the office of the county clerk and recorder of Custer county at Miles City.
Q. Well, did you make any further investigation into it?
A. I made some inquiries, such as I could, about Miles City, but didn't go to Forsyth at that time. I couldn't find out anything about the matter except what appeared on the face of the assignment itself. That appeared to be a valid assignment—appeared to be regular upon its face.
Q. Did you report the fact to them?
A. I did.
147 Q. There was no further action taken on their claim against Young?
A. There was nothing further done, so far as I know, at that time. Strivell & Garlock did nothing—nothing further at that time.
Q. Well, did the claim ever go into your hands at a subsequent date?

A. We received statements of these accounts which have been in evidence here some time in December—about the middle of December, 1883, with a request to make collections——

Mr. GILMAN: I object.

Mr. WARNER: You needn't state what communication you had with them, but what did you do?

A. I made some inquiries about the condition of that business at Forsyth.

Q. At that time where was Mr.—when you made these inquiries where did you find Mr. Winchester?

A. Mr. Winchester had been around Miles City for some time. I called him into my office once or twice, I think, made some inquiries there in regard to that business. He told me that he had——

Mr. GILMAN: Wait a minute. I object to these conversations. In the first place, for what purpose is it offered?

Mr. WARNER: Well, I asked him about that conversation. I believe he didn't say what I am going to prove.

Mr. GILMAN: I object to the conversation as incompetent, irrelevant, and immaterial.

The COURT: Well, what do you propose to show, Mr. Warner?

Mr. Warner here consulted the witness.

Q. Did you go out to Forsyth?

A. No, sir; I didn't go to Forsyth at that time.

Q. Well, what did you do with regard to the claims?

A. Upon finding that the stock of merchandise was not in Winchester's possession——

Mr. GILMAN: Well, you need not state; state what you did.

148 WITNESS: I commenced two suits on these two claims of Beaupre, Keogh & Co., one against Young and the other against Young & Winchester. Those suits were commenced in the district court of Custer county, Montana.

Q. Those are the cases of which I have read the record here to-day, are they?

A. Yes, sir.

Q. This property was attached in those cases?

A. Writs of attachment were issued in these suits, and I placed them in the hands of the sheriff to make a levy.

Q. Did you attend the sale at Forsyth last December?

A. Yes, sir; I was there.

Q. Do you remember the amount the property brought at that sale?

A. I don't remember precisely the amount it brought. It was somewhere about $670—$670 odd, I think, altogether. That is my recollection of it.

Q. Did this stock at that time appear to be damaged or in good condition?

A. Well, there was some of it which was evidently old stock. It was a stock which had been on hand not only for a few months during the time the sheriff may have held it, but it must have been

on hand, from the appearance of it, a good while longer than that; probably a year or two, or two or three years.

Q. What did you judge it by?

A. By its appearance, as to its having been handled and being shelf-worn. I handled them over somewhat. I saw the stock there and looked it over somewhat.

Q. Mr. Young had been moving up and down to keep up with the end of the track, had he, before this?

A. When I first knew Mr. Young I think it was in 1881. He was then running a buckboard up and down the track from one camp to the other, and while they were constructing the Northern Pacific railroad he was carrying the mail for those camps and was selling some goods, I think. Shortly after that he had
149 opened sort of a store at Rosebud, when the railroad reached there. That was the spring of 1882, I think. He had some goods on hand at that time. I don't know whether these were the same goods or not.

Q. Well, you say that some of those goods looked as though they had been kept a long time?

A. Yes, sir; part of them, evidently.

Q. Shelf-worn. You say, as a matter of fact, that Mr. Winchester was living at Miles City at the time the suits were brought?

A. I had seen him around there nearly every day, I think, for some time before that; I don't know just how long.

Q. Did you ever see him out there before or after the levy at Forsyth?

A. No, sir.

Q. Was he or Mr. Young present at the sheriff's sale?

A. Mr. Young was present at the sheriff's sale, but not Mr. Winchester.

Cross-examination by Mr. GILMAN:

Q. Have you got the letter that inclosed these claims to you for action in December?

A. I think that letter is still in the possession of my firm—that is, my partner and myself—in our office. It may have been lost, but I think not. I think it is in our possession.

Q. Have you it here with you?

A. No, sir; it is in our office, in Miles City, Montana, if we have it.

Q. What time did the claims come into your hands—what day in the month of December?

A. Well, as nearly as I can recollect, it was about the middle of the month. It may have been later than that, a few days, or a little earlier; but I should think it was not later than the 20th.

150 Q. Did that communication give you positive instructions what to do, or did it leave it discretionary with you to take such action as you thought proper.

A. The orders were not peremptory in that letter, as I remember it, but there was some subsequent correspondence by telegram, after which we commenced these actions.

Q. Did you ever see this stock of goods prior to the sale by the sheriff?

A. I never saw that stock of goods to look over it and look through it at all until about five days before.

Q. Five days before the sale?

A. Yes, sir; at the time the inventory was taken.

Q. Were the shelves in that store-room full of goods?

A. Well, so far as that is concerned, the store-room, the principal room, there was what would ordinarily be considered as being rather crowded with goods at the time. The shelves seemed to be full, and goods were piled around on the tables—there were some tables in there, as I recollect—and on the counters.

Q. The shelves seemed to be full and goods piled on tables and counters? Did the shelves extend clear up to the ceiling?

A. Pretty near the ceiling. I think there were goods on top of the shelves, and the shelves must have extended up to within a foot or sixteen inches of the ceiling, according to my recollection of it.

Q. Were you down in the cellar?

A. Yes, sir.

Q. What was down there?

A. Well, there was some goods there. I don't know as I could enumerate the various articles.

Q. Well, was it crowded down there—full?

A. No, sir; it was not; oh, there were some goods there, but it wasn't crowded.

Q. What was the general character of the goods down there?

A. Some provisions, I think, left there; lard and some
151 barrels of one kind and another. I don't know what they contained. There were not many goods in the cellar at that time.

Q. About this back shed that has been spoken of. Did you go into that?

A. No, sir.

Q. Did you go into that the day of the sale?

A. I don't think I ever went into that shed at all. I looked in there through the window or some other way. I saw that it was apparently empty, and I paid no further attention to it.

Q. Do you say it was empty?

A. Well, it appeared to be. I didn't make any close examination of it. There were no goods sold in there.

Q. One of the other witnesses stated that there were goods in there.

A. I presume there had been goods stored in there before that time, but on the day of the sale I think they had all been moved into the upper room.

Q. Do you know whether any goods had been sold out of the store after the levy and prior to the sale on the execution—any perishable goods or anything else?

A. No, sir; not to my knowledge. I don't know of any.

Q. Did you give any directions to have any of them sold?

A. I don't remember whether I told the sheriff to sell certain

perishable property. There was some property there in the way of vegetables that was perishable property—a small amount. I may have given him directions to sell those. I don't remember whether I did or not. I think not.

Q. Well, your understanding is that there was a quantity of the perishable property sold before the sale on the execution?

A. Yes, sir.

Q. Do you know about the amount that was realized on that?

152 A. The amount realized on that was as reported by the sheriff; something like; I can't state the amount exactly, but somewhere in the neighborhood of ninety or one hundred dollars; that is my recollection of it; I may overstate it and I may understate it.

Redirect examination:

Q. You were speaking about this store-room having shelves up to the ceiling. How high was the ceiling?

A. Well, I heard the testimony of Mr. Winchester here yesterday as to the height of it. My impression would have been that it was higher than eight feet, though I don't know as it was; he stated it was eight feet high.

Q. Well, did these shelves start from the floor, or did they start from the counter?

A. Well, they started about the level of the counter. There were places for storing goods under the counters; I think some drawers.

Q. That would make about how many shelves high?

A. Well, I can't state positively, but I should say they were five or six shelves high; perhaps more.

Q. This was sort of a shanty building in a new town?

A. Forsyth is only a little place of—I don't know how many houses—perhaps anywhere from twelve to twenty. Generally the houses are, most of them, boarding-houses, poorly built, though there are a few fair buildings there. This building of Young's, the one which had been occupied by Young, was a building as has been testified to; I should say about 16 by 40, in my opinion as to the size of it, and a low building; the ceilings of the rooms were low—simply studding put up, and I think cotton sheeting on the inside and weather-boards on the outside and the roof.

Q. Ceiling about eight feet high, and these shelves started from the counters and ran up?

A. Well, from about the level of the counter, I should say.

Court here adjourned until 10 o'clock a. m., June 27, 1885.

153 At the convening of court on the morning of the 27th of June, one of the jurors being absent, by consent the case proceeded with eleven jurors.

Mr. WARNER: We offer in evidence from page 436 of the Revised Statutes of Montana sections 165, 170, and 172, and from page 75 section 191, being the sections pleaded in the answer.

Received without objection and read.

C. GOTZIAN, sworn as a witness on behalf of the defendants, testified:

Direct examination by Mr. WARNER:

Q. Where do you reside?
A. City of St. Paul.
Q. You are a member of the firm of C. Gotzian & Co.?
A. Yes, sir.
Q. Did that firm have dealings with Charles Young in 1883?
A. Yes, sir.
Q. State whether or not you received or your firm received from Young or Winchester in January, 1884, any money.
A. I will have to refer to a statement; I can't remember. (Witness looks at a statement.) January 18, 1884, we received $56.92 from Winchester, assignee.
Q. State whether or not that money was paid back to Noyes Bros. & Cutler.
A. The same check was turned over to Noyes Bros. & Cutler.
Q. When or about when?
A. The same day, as nearly as I remember.
Q. Did you send it up to them or did they call for it?
A. That I don't remember.
Q. Have you got the date there when it was turned over to them?
154 A. January the 18th, 1884.
Q. Is that their receipt for it?
A. No.
Q. The same day you got it it was turned over to them?
A. Yes, sir.

Cross-examination by Mr. GILMAN:

Q. Under what circumstances and how — that happen to be turned over to Noyes Bros. & Cutler?
A. Well, it seems Mr. Granger went up there to prospect and see what could be done in that matter, and we were one of the parties that agreed to pay part of the expenses—prorate the expenses. I believe that was the agreement, and then after Mr. Granger returned he had gone further than our instructions. He had acted under Noyes Bros. & Cutler's instructions and commenced suit, I believe—whatever it is—and after he got back then we agreed with Noyes Bros. & Cutler to prorate expenses with them, and for that reason we turned that money over to them.
Q. Well, let me see if I understand you. You, with other creditors, joined in sending Mr. Granger up there, in the first place?
A. Yes; I think that was it.
Q. Under an agreement that you were all to share in his expenses?
A. In his expenses to up there.
Q. When he got there had he in purchasing this stock of goods transcended any authority he had from you?
A. No.
Q. Eh?

A. No; he had no authority from us to commence suit or make any attachment or anything of that sort, as nearly as I can recollect. I don't know what he did.

Q. Well, after he came back you were informed that he had made this purchase of the goods for Noyes & Co.?

A. Yes, sir.

155 Q. Do I understand you correctly that after he came back you were informed that Noyes & Co. had purchased the stock of goods, and that it was then arranged between them and you and other creditors that you would prorate, each one contributing his proportion of the expenses and share in the same proportion of what should be realized?

A. Well, yes; that was after Mr. Granger returned—after Noyes Bros. & Cutler had commenced suit.

Q. After they commenced suit?

A. After they had commenced suit. They did that on their own hook.

Q. On their own responsibility?

A. Yes; then they left it all, whether we wanted to come in or not; we could do then just as we—that is, if we were willing to share in the expenses then we could share in the profits.

Q. Share in the results of that suit?

A. Yes.

Q. And there was a pool of that kind made of the creditors, was there?

A. Well, as near as I understand it.

Q. At any rate you had that arrangement?

A. Yes, sir; we had that arrangement.

Q. And this money was just simply turned over to them as a part of your contribution to the expenses?

A. Yes; that is the way I understand it.

Redirect examination by Mr. WARNER:

Q. Well, Mr. Gotzian, do you know who was present when this arrangement was made? Was you present when this arrangement was made?

A. No; Mr. Stevens was present.

Q. Well, was you present?

A. No, sir; I was not, and I told you so before, and I wanted you to examine Mr. Stevens.

Q. Then all Mr. Gilman has been telling you you don't know anything about of your own knowledge?

156 A. I know by our books—I looked that up—and from what Mr. Stevens told me from time to time when he went there when he attended to it; that is all I know about it.

Mr. WARNER: I move to strike that testimony out.

The COURT: Who is Mr. Stevens?

WITNESS: Mr. Stevens is a man interested in our business.

By the COURT:

Q. Is he a partner in your business?

A. No, sir; he is not. He is my financial man.

By Mr. GILMAN:

Q. What position does he hold in your house?

A. He is the financial man—attends to the collecting of accounts and attends to all the finances, collecting bills and everything of that kind.

Q. Well, what you have testified to and all you have testified to in response to Mr. Warner's questions and in cross-examination is knowledge you got from your books?

A. That is what I got from my books and from Mr. Stevens. The books I looked up this morning.

Mr. WARNER: Without waiving my motion, I ask this farther question: When you said this same check was turned over to Noyes Bros. & Cutler, what knowledge had you of that?

A. It never went into our books at all. Just as we got the check we endorsed the check.

Q. Was you present when that was done?

A. Yes; I think I was in the office at the time. I remember this morning after Mr. Stevens told me I remembered all about it, and I think I was present when it was done.

Mr. WARNER: Now, if the court please, I reiterate my motion that the testimony on cross-examination be stricken out as hearsay testimony.

The COURT: I think I will let it stand as a part of the information the witness received.

157 Mr. WARNER: The court will please save me an exception.

Same was noted by the court.

By Mr. WARNER:

Q. You say that was done on the 18th day of January?

A. Yes.

Q. That check was turned over on the 18th?

A. Yes, sir.

Q. You said that this pool extended to all the creditors of Young or Winchester?

A. No, I didn't; that was simply our arrangement with Noyes Bros. & Cutler. I don't know what the others did.

Q. You don't know who was in this pool, then?

A. I don't know, not particularly, no; I believe Mr. Bohrer.

Q. Well, I want to know the broad fact, whether or not it includes all the creditors of Young or of Winchester.

A. I don't know who all the creditors are.

Q. Well, I don't ask you that question, but I want to know whether this understanding extends to all the creditors or not.

A. No.

Q. Or whether it only extends to two or three or three or four.

A. I can't give you that information; I don't know.

Q. Is the contract in writing?

A. With whom?

Q. This pool arrangement.
A. Oh, no, no, no; nothing whatever.
Q. There has been nothing realized under it yet?
A. Not a cent except that $52.96.
Q. Well, was this pool made before Granger went to Montana?
A. No, sir; it was after he came back.
Q. Well, you didn't realize anything yourself before you handed it over to Mr. Noyes?
158 A. No; we certainly could not have got it before Granger. We certainly didn't get it before Granger came back. We gave it back, as nearly as I can recollect, the same day we got it.
Q. How did you get it, by Granger or by mail?
A. We got a check from Noyes Bros., and we endorsed the check and turned it back to them.
Q. You got the check from Noyes Bros. and endorsed it and handed it back to them?
A. Yes, sir.
Q. Do you understand that that pool extends only to the parties that contributed money?
A. I don't know whether it does or not; I couldn't tell you. As I understand it, I understand that the North Star Boot and Shoe Company of Minneapolis—they were creditors and they didn't go in until a month after we did, and they came in too on that same arrangement—that that was a month afterwards; they didn't know anything about it until a month afterwards.
Q. Well, if you have any knowledge on that subject, Mr. Gotzain, I would like to know whether or not that understanding is to embrace all the creditors or only certain parties.
A. I don't know how many creditors there is; there may be some left out.
Q. That is not the qnestion, how many there are, but I want to know whether it is to extend to all of them, no matter how many.
A. I guess they all have a chance to come in as well as we did. I don't know. I couldn't give you any information on that at all. This was all arranged by Noyes Bros. & Cutler. That is where we got our arrangement.

Recross-examination:

Q. There is a letter acknowledging the receipt of that $50.
A. Oh, we have got a check from Winchester—I made a
159 mistake—from C. A. Winchester. We didn't get that from Noyes Bros., we got it from Winchester. Here it is (looking at memorandum); I didn't notice.
Q. Here is a letter you wrote acknowledging the receipt of it.
A. I got it from Winchester; that is my memorandum.

The letter shown witness was marked by the court Exhibit "W."

WITNESS: I received it from Winchester, assignee, and then turned it over to Noyes Bros. & Cutler.

Redirect examination:

Q. When you stop and think about that was not that letter handed to you either by one of the Noyes firm or by Mr. Granger?

A. I don't know.

Q. Didn't Mr. Granger either bring that letter with the check you speak of and this letter or didn't you get the letter and the check too from Noyes? Wasn't it all sent to them and isn't your first recollection about it the true one?

A. No; I think not. I can say it was direct to the house.

Q. Is that the reason you think you got it by mail, simply because you saw that letter? Didn't Charles P. Noyes bring you the letter and the check enclosed in it?

A. Well, I don't think so.

Q. Have you any recollection about it?

A. No; I have not.

Exhibit "W" was then read to the jury by Mr. Warner as follows:

"MILES CITY, MONTANA, *January* 15, 1884.

C. Gotzian & Co., St. Paul, Minn.

MESSRS.: Please find enclosed a draft on St. Paul to your
160 order for $56.92, less exchange, on account with Charles Young.

Yours truly, C. A. WINCHESTER;
Assignee."

By Mr. GILMAN:

Q. Just state what memorandum you have got with reference to the receipt of this money.

A. Well, I took a memorandum this morning from the books: "January 18, 1884, received draft from C. A. Winchester, $56.92."

By Mr. WARNER:

Q. Of course you credited it to him and then turned it over to the other party?

WITNESS: No; this is what our books show.

C. P. NOYES, recalled as a witness on behalf of the defendants, testified:

Direct examination by Mr. WARNER:

Q. Have you got here that account you spoke of—that $600 being entered upon?

A. Yes, sir.

Q. You can use it to refresh your recollection. After looking at your account of that when was that $600 draft paid?

A. Jan. 17th.

Q. Now, then, did you get from Mr. Gotzian on the next day $56.92?

A. Yes, sir.

Q. Did you get any sum from Bohrer & Hulsick?
A. Not until some time after that. On the 22nd of January we sent down to Bohrer & Hulsick and got from them $168.72.
Q. Anything from Campbell & Burbank?
A. Yes, sir; $38.03.
Q. When?
A. On the 17th we received that.
Q. Well, from any other party there?
A. Mr. Winchester, assignee, the same day by mail, $165.16.
Q. On the 17th?
161 A. Yes, sir.
Q. Well, any one else?
A. I don't know whether I gave you Lindekes, Warner & Schurmeier.
Q. No.
A. On the 21st, from Lindekes, Warner & Schurmeier, $71.17. That I sent for.
Q. Any more?
A. No, sir.
Q. Are there any credit items to that account?
A. Those are credits. When we receive money we credit it.
Q. Here (looking at certain page of the book) is what you paid out.
A. Yes, sir.
Q. Well, you have got paid out in that. I don't see the $600 that you received.
A. That don't belong in that account at all until after we had formed the pool.
Q. Well, I see the first item in that is January 11th?
A. Yes; but then that was only expenses with reference to the inquiry, and so on.
Q. Well, when was it that you formed the pool as you say?
A. We formed the pool on the 19th of January, I think it was. I think it was on the 19th of January; we have papers to show. It was either the 19th or 20th.
Q. Well, then, explain to me, if you please, why it was that you got the money from Campbell & Burbank on the 17th and from Gotzian on the 18th if you didn't make the pool until the 19th?
A. Well, I can explain that to you. We had an arrangement with those men. Several of us had employed Mr. Granger to go up there and look the ground over, and we were to share in the expenses of his trip and made an arrangement with him. There was no profits because he had no instructions what to do, but we
162 merely to inquire into the state of things. We only knew by rumor what was going on up there, and we knew no one up there to find out from, and so we concluded among ourselves that we would pay the expenses and prorate them and send him up there to find out the exact status of affairs. Not until he came back did we enter into any agreement as to what course of procedure we should adopt or that we would make any procedure.

Q. You have got in this account "D. C., $225." What does that mean?

A. Well, I can't tell what that means (that was some time after) without tracing up the entry.

Q. W. A. Burley, $25; what is that?

A. I suppose W. A. Burley is an attorney; I suppose that is some attorney's fees.

Q. Is that the man commonly called Dr. Burley?

A. I don't know; I think it is; it is W. A. Burley.

Q. Well, that is Dr. Burley, isn't it?

A. I don't know whether he is Dr. Burley or not.

Q. Does this pool that you spoke about extend to all the creditors or only to such as you have named there?

A. It extends to some that are not named there.

Q. Does it extend to all?

A. I don't know; we tendered the proposition to some of the creditors, who declined.

Q. There is a certified copy of the assignment; I want to know if it extends to all of them.

A. No, sir; it does not.

Q. Isn't the broad fact true that every dollar of that $600 draft was immediately paid back to you?

A. No, sir; it is not true.

Q. Well, how much was there?

A. We received back $500 from different parties.

Q. What became of the other $100?

A. The hundred, I suppose, was expenses of Mr. Granger. We have since received, however, of course, payments from those
163 who entered the pool of their *pro rata* of the amount of money.

Q. I am speaking of that identical $600. You own that Winchester kept $50 and Granger kept $50 and you got the balance. Is that it?

A. We received $500 from these different parties; credited up on the pool, and each one of their proportion.

Cross-examination by Mr. GILMAN:

Q. Mr. Noyes, as I understand you, a lot of the creditors got together here in the first place, when you only knew from rumor what was going along, and clubbed together to make up the amount to send Granger up there to look the ground over to find out the status of the thing?

A. Yes, sir; that is exactly it. That was on the 11th day of January; we sent him off the next day.

Q. Well, Granger went up there, and the first thing you heard was this telegram that was put in evidence when you were on the stand before?

A. Yes, sir.

Q. Informing you that he had made the purchase of the goods?

A. Yes, sir; that was the first we heard from him.

Q. Now, what entry did you first make up in your book with reference to that draft which you had to pay of $600; to whom did you charge that, or how was it entered on your books?

A. We charged it to Mr. Granger until such time as he could come home, as was always our custom. Mr. Granger is our attorney, and the account with Mr. Granger is quite a long account, and a great many matters were in the same account; we charged it right into the same account. When he gets home he gives us a report and it is checked up and distributed where it belongs; but, until such time as he reports what he has done with it, it is charged to him.

164 Q. Now, after he got home and reported to you the purchase of these goods what was then done?

A. Out of the whole amount, $787, which had been given Mr. Granger—$600 and two other items, in all $700 and some odd dollars ($787.12)—the amount of money he had used—was then charged to an account on the 22nd of January—"C. Young pool," title of the account—and that was charged to that account.

Q. Now, who went into that pool, to start with?

A. All who were present at that meeting on the 19th of January.

Q. Well, who were they?

A. I forget who the individuals representing the firms were, but the firms represented were Campbell & Burbank, C. Gotzian & Co., Lindekes, Warner & Schurmeier, Bohrer & Hulsiek, Noyes Bros. & Cutler.

Q. Anybody come in since?

A. Yes, sir.

Q. Who?

A. The boot and shoe company of Minneapolis; I forget their title.

Q. North Star?

A. I think it is the North Star Boot and Shoe Co.

Q. Was the invitation extended to others? State how that was.

A. Yes, sir.

By Mr. WARNER:

Q. Well, let us see the invitation if you are going to prove one.

WITNESS: The only other one that I remember making any proposition to join in the matter who did not join was Albenberg & Conhaim.

Q. Where was that firm doing business?

A. I don't remember. I remember that they did not see fit to join us; that is all.

Q. Well, state what, if anything, was done to communicate with the other creditors and asking them to join the pool.

165 A. I don't know that anything was. I don't remember what was done, if anything, with reference to any other creditors than those I have mentioned; there may have been, but I don't recall it if there was.

Q. Well, does that embrace all the creditors that you know of?

A. I don't remember about these other creditors.

Q. What were the terms and conditions of this pool arrangement?

By Mr. WARNER:

Q. Was it in writing?
A. No, sir.

Mr. WARNER: We object to it as not cross-examination.
The COURT: I think we ought to have the whole facts out.

Exception by the defendants.

WITNESS: We agreed on the 19th of January—Mr. Granger reported the condition of things there at this meeting.
Mr. WARNER: Well, I object to a conversation of that kind; you are asked to state the terms of the contract.

By Mr. GILMAN:

Q. Just state the terms of the pool arrangement.
A. The pool arrangement was that we were to prosecute this suit—prosecute a suit—it was not then definitely determined in what shape it was to be put at all and had not been begun, as I remember it. Mr. Granger proposed to prosecute the suit and they joined us; they were to share the expenses. If they saw fit to share in the expenses they were to share in the proceeds of that *pro rata* according to the amount of their accounts, and they would share in the expenses to the amount of their accounts.

Defendants rest.

C. A. WINCHESTER, recalled as a witness in rebuttal on behalf of the plaintiffs, testified:

166 By Mr. GILMAN:

Q. (Paper handed witness.) Look at that list of creditors of Young and state which of those creditors has been paid in full, if you can.

Objected to as not rebutting testimony.

Mr. GILMAN: It is simply to show that some of these small creditors have been paid in full.
Mr. WARNER: I think we ought to have the books here on that subject. I object to it, as the books are the best evidence.
The COURT: If he knows of his own knowledge.
WITNESS: Those that were paid I know I paid them, and I know why I paid them, and I can tell that if you want.

Exception by defendants.

Q. Well, state who of them were paid.
A. The American News Company of this city, $30; C. B. Towers, Miles City, $30; Charles Anderson, Forsyth, $30. That is all.
Q. That "J. H. Schurmier, of St. Paul," do you know whether that has been paid or not?
A. I think it has, but I would not swear positively. I think that

account is settled; but I only tell those that I know positively. Probably could find out, if necessary, by summoning him.

(Paper handed witness.)

Q. Did you receive that letter from the defendants Beaupre and Keogh?

A. Yes, sir; I think I did; it is addressed to me anyway.

Q. It refers to one payment of August 31st. Do you recollect of writing to them on the 31st of August relating to the matter to which this refers?

A. Yes, sir; I do.

Q. What inquiry did you make of them in that letter?

A. I asked them if they knew of any one who would be likely to wish to purchase the business out there—some business man that would like to go out there and buy the business.

167 (Paper handed witness.)

Q. This is the letter you received in reply?

A. That is in reply.

Letter marked by the court Exhibit X.

WITNESS: I thought perhaps they might know some one——

Mr. WARNER: Well, wait a minute until they ask you something. I object to the testimony, not only what he proposes to say, but any further testimony on the validity of that assignment, as not competent in rebuttal.

The COURT: I think I will receive it.

Exception by defendants.

Exhibit X was then read in evidence by Mr. Gilman.

Q. Did you advertise in the papers this stock of goods for sale?

A. I did.

Q. In what papers?

A. The St. Paul Pioneer Press and in the Miles City papers.

Mr. GILMAN: We offer in evidence the Pioneer Press showing the advertisement of this stock of goods for sale, from August 25th to September 4th, inclusive.

Advertisement read to the jury as follows:

"For sale, a drug, notion, and general merchandise business of Charles Young, at Forsyth, Montana Territory. For sale at a bargain. A splendid opening for a business man with three or four thousand dollars to invest. For further particulars call on or address C. A. Winchester, assignee of Charles Young, Forsyth, Montana."

Q. Did you keep in that store liquors?

A. Yes, sir; some.

Q. Well, in what way?

A. As they usually do in drug stores, for medicinal purposes.

Q. Didn't keep a general stock of liquors?

A. No, sir.

Q. But you had to take out a license, did you?
A. Yes, sir.
168 Q. Did you take out a license?
A. I did.

(Paper handed witness.)

Q. Is that the license you took out?
A. United States license; yes, sir.

License marked by the court Exhibit "Y."

Q. I see that license is dated as taken out on September 21st. Why was it deferred until that date before you took it out?
A. Mr. Young had a license of the same kind taken out the year before, and I didn't know at the time of the assignment that it was necessary for me to take out a new license; didn't know of it, in fact, until the deputy collector came along himself and informed me, and as soon as he told me that I took out a license, which he dated back to cover—I think he dated it back two or three months from the time.
Q. When did Mr. Young first speak to you about making an assignment at all?
A. About two or three days before the assignment was made; not longer, I think, than three days.
Q. Well, when he first spoke to you did he ask you to become the assignee?
A. Yes, sir.
Q. What did you do at first?
A. I declined or refused to have anything to do with it at first.
Q. Did you, before consenting to act, consult an attorney?
A. Yes, sir.
Q. After you consented to act did you consult an attorney as to whether you could employ Mr. Young as a clerk for you?

Objected to as leading. Objection overruled, and exception by defendants.

169 Q. I wish to know whether, after you had consented to act and had accepted the trust, you consulted an attorney; and, if so, with reference to what particular matter.
A. I did not consent or fully make up my mind to consent until I had consulted the attorney. When this conversation took place it was agreed between Mr. Young and myself that I should see an attorney the next day. I went to Miles City the next day and consulted with Dr. Burley, and he told me that there would be no difficulty in my assuming charge of the business and I told him that I was not fully acquainted with the stock of goods there and I needed some one to assist me; and he said, "You can employ Mr. Young as clerk;" and he being the best help I could get under the circumstances, I employed him. My impression at the time was that I could not have Mr. Young in the store at all until I consulted with the attorney. That was my impression. Not knowing much about it, I consulted an attorney for the purpose of finding out.

Q. Well, in employing him, upon what advice did you act; upon your own judgment or upon the advice of the attorney?

A. The advice of the attorney, decidedly.

Q. How long did you say that Mr. Young remained with you as a clerk immediately after the assignment?

A. I think altogether about two months before he went to the park. He was off and on some time——

Q. Well, how long did he remain about the store immediately after the assignment; up to about what time?

A. Until the latter part of the month of June. I can't remember the date; perhaps the 20th or 25th.

Q. Then where was he during the month of July?

A. When he first left Forsyth he went to Billings and Livingston and was gone some time—I can't say how long—and returned some time in the month of July, in the fore part of July, perhaps about the 4th or 5th. Then I know that he went to Miles City; was gone a few days, I think until about the 14th of July. He was then with me until the 1st of August.

170 Q. When did he go to the Yellowstone Park?

A. About the first of the month of August or fore part of the month.

Q. And then came back when?

A. He didn't come back to stay until November. I think he was back once, some time during the month of October, for just a day or two.

Q. But came back about the 1st of November and then commenced clerking for you again?

A. Yes, sir.

Q. When did you say the agreement was made as to what compensation he should have?

A. About the 1st of November.

Q. What, if anything, was said with reference to his compensation when you first employed him as clerk—that is, immediately upon the assignment?

A. There was no definite sum stated. He stated then that he only wanted his living. There was no definite sum stated at that time what he should have. He didn't have a great deal.

Q. Now, in December did I understand you to say that you were away for any length of time prior to the time that you went to Miles City?

A. I went to Miles City.

Q. I am not talking about that. Prior to the time you went to Miles City, on the 20th of December, were you absent from Forsyth in another place?

A. Yes, sir; I was absent about three days at the beginning of the evening of the 9th. I left Forsyth the evening of the 9th, about sun-down, and was gone, I think, about three days.

Q. Where?

A. I went up the Rosebud creek on a collection tour.

Q. Gone about three days?

A. Yes, sir. I went twelve miles that night, horseback, and staid with a friend and acquaintance.

By the COURT:

Q. Collecting for this business?

171 A. For this business; yes, sir.

Q. Were you leaving him in charge of the store?

A. Leaving Mr. Young in charge.

Q. In this bill book there are several bills of goods to C. Young, I notice. By whom were those goods ordered?

Mr. WARNER: Were the orders in writing?

A. I think the firms probably have my letters.

By Mr. GILMAN:

Q. Were the orders in writing?

A. Yes, sir. I ordered them in writing; most certainly.

Mr. WARNER: I object, then. We want the writing.

Q. Who received the goods?

A. I did.

Q. What was done with them?

A. They were put in the store which I had charge of.

Q. In the general stock?

A. In the general stock, and sold as we had occasion.

Q. Which of the houses that you purchased goods from—have you looked at this bill book and found out which of the houses you purchased goods from were in the habit of making their bills out to Charles Young instead of to you as assignee?

A. There is one house in Chicago. There are two bills from Manvil Brothers directed to Charles Young or C. Young.

Q. Is that the Chicago house?

A. Yes, sir.

Q. Well, what other house?

A. There is the Moorhead Manufacturing Company; that is a flour company. They manufacture flour—Moorhead, this State. I think they are all billed to Mr. Young. I don't know, though; perhaps part of them are billed to myself. I know one or two are billed to Mr. Young.

Q. How about any Minneapolis houses?

A. There is the house of Wyman, Mullen & Van Dyke. With one or two exceptions, bills were directed to Mr. Young.

(Paper handed witness.)

172 Q. Look at that letter.

A. That is my writing and my signature.

Q. To whom is that letter addressed?

A. Wyman, Mullen & Van Dyke, Minneapolis.

Letter marked by the court Exhibit "Z."

Q. Do you know why the goods were billed to Young instead of to you as assignee?

A. I do not.

Q. When you received the bills what did you do with them?

A. Pasted them in that book—that is, after I had the book. I didn't have the book until June, I guess.

Q. Pasted them right in with the other?

A. Yes, sir.

Q. Bills came to you?

A. Yes, sir.

Q. When you divided this $500 up that you got on the sale of the goods how did you send that money to these creditors—in what way?

A. I sent it, I think, in the form of a draft or check—bank draft or bank check—through the mail; put it in an envelope addressed to the parties.

Q. To whom did you mail the drafts?

A. One to Noyes Bros. & Cutler, one to Lindekes, Warner & Schurmeier, one to C. Gotzian & Co., one to Campbell & Burbank, and one to Bohrer & Hullsiek.

Q. This inventory in these books, taken in December, as you have testified, marked Exhibit F, do you know what they are?

A. Yes, sir; I have seen them.

The COURT: What does that inventory figure up?

Mr. GILMAN: The goods themselves $5,084.66.

WITNESS: Goods and fixtures, I guess.

Q. After this inventory was taken what became of these books?

A. They remained in the store there as long as I was there. No, sir; I will take that back. I took them with me to
173 Miles City to foot up. I didn't finish footing up and carrying out prices. I finished carrying out the prices and footing up after I went down to Miles City, and they remained in my possession.

Q. Let's understand. When you went to Miles City on the 20th you took these along with you, as they had not been footed up?

A. No, sir; they had not been footed up.

Q. Well, what did you do with them there, at Miles City?

A. I footed them up and carried out prices. I had the price of each article set opposite the article.

Q. What did you then do with these books?

A. I kept them there, I think, at the time.

Q. For how long?

A. I think I turned them over to Mr. Granger when I made the sale; either then or soon afterwards. I think I turned them over to him, at any rate.

Q. You have not had possession of them since?

A. No, sir; not since.

Cross-examination by Mr. WARNER:

Q. Mr. Young remained with you until about the end of June?

A. Well, till toward the latter part, I said; perhaps the 20th or 25th. I couldn't say just the date he went away.

Q. That is the reason that your United States license dates back to June, is it, because Young was running the business until July?

A. No, sir; I don't think that is the reason.

Q. Isn't that the way you explained to the United States revenue officer at the time?

A. I explained it to him in this way, I think, that there was a license. I think we had one up there in the store that Mr. Young had taken out the year before, and I didn't know it was necessary for me to take out a new license in my capacity as assignee until the expiration of the old one.

174 Q. Well, in point of fact this United States license dates back to the time—just about the time—that Mr. Young left there?

A. I can't say.

Q. In June?

A. I can't say.

Q. Well, I don't see how you can't say it now just as well to me as to Mr. Gilman, or was it that he was testifying at that time?

—. ——.

Q. What do you mean by dating back?

A. Well, I never thought——

Q. What did you mean when you told him that it was dated back?

A. I meant in regard to these coupons.

Q. Well, it is dated back to June, is it, including July?

A. It seems so.

Q. Well, it seems just as plain to you now as it did when answering Mr. Gilman's question?

A. So far as that paper is concerned; yes, sir.

Q. You said you was out on a collecting tour. Was that your account or the old Young account?

A. Some of both, I think.

Q. Did you sell goods on credit there? What was the total amount of your outstanding accounts due to you at the time of these attachments?

A. I couldn't say.

Q. Well, can you tell within a thousand dollars?

A. Yes, sir.

Q. Well, tell within a thousand dollars.

A. I think, perhaps, three or four hundred dollars. I don't know as it was that much.

Q. All you had sold you had collected the money for into four hundred dollars, had you?

A. I think so.

Q. Can you explain why it was, then, that at the close you owed so much more than you was owing at the beginning? What had you done with the money?

175 A. Put it into the goods; had more new goods at the end than we had at the beginning.

Q. How much more?

A. Over a thousand dollars' worth.

Q. Then you was not merely sorting up the stock, was you? You was laying in a new stock to go right on in business?

A. I laid in a supply for winter. I saw that there was no other way only to continue the business through winter in order to get any money out of it. I laid in a winter supply, which is the reason I was so far behind at that time.

Q. Now, at the time of the assignment were there any creditors at Moorhead?

A. I think not.

Q. When you bought flour at Moorhead you bought it in the name of Charles Young, didn't you?

A. I think the first order was sent in in that way.

Q. At the time of the assignment were there any creditors from Chicago?

A. No, sir.

Q. When you bought goods in Chicago you bought them in the name of Charles Young, did you?

A. I can't say how I ordered them from there.

Q. Well, didn't you tell Mr. Gilman a little while ago that the goods that were bought in Chicago were bought in the name of Charles Young?

A. I told him there were two bills there.

Q. Will you state to the jury how it was that parties in Chicago learned of Charles Young if you ordered the goods?

A. I don't know unless I said something about it in my letter.

Q. Tell the jury why they were shipped to Charles Young if they were not ordered by Charles Young or by you in his name.

A. I don't remember how it was or why it was.

176 Q. All the bills of Wyman, Mullen & Van Dyke, save one, run to Charles Young, don't they?

A. I think so.

Q. Can you explain to the jury why it is that all those goods were shipped to Charles Young if you ordered them?

A. There are two bills in that book dated April 18——

Q. Yes; I am throwing out that one that was changed to Charles Young.

A. Well, I was answering your question—trying to explain that to the jury. I think that it is easily explained. Mr. Charles Young had ordered goods from them before the assignment.

Q. Were they creditors in the assignment?

A. No, sir; he ordered them. They came C. O. D. by freight, I think. He had to pay the freight agent before he could get them.

Q. Well, they would not trust him, then, before the assignment; was that the case?

A. I don't know what the reason was. I don't know whether they knew of his standing or not.

Q. Well, it seems they sent their goods C. O. D. You say before the assignment?

A. I think they did.

Q. Do you mean to be understood that Wyman, Mullen & Van Dyke sent goods on credit after the assignment to Charles Young—after he had failed in business?

A. No, sir. I paid cash for all the goods got from that firm.

Q. Well, why did you have them in the name of Charles Young, then? That is what you were trying to explain. Go on.

A. Well, I can't say positively, but I think it was for the reason that they knew him and had been sending goods to him.

Q. Well, if you were paying cash what difference would that make?

177 A. I don't think it makes any difference. I don't think it makes any difference now whether they came in my name or in Young's. Those goods came into that store and I had charge of them, and I paid for them as fast as they have been paid for them.

Q. How much is the balance due on that account—the Wyman, Mullen & Van Dyke account?

A. I don't think there was anything due, but I saw Mr. Mullen the other day, and he claims there is $1.30 yet due. I told him if he could explain to me satisfactorily that there was that amount due I would pay it, but I don't think I owe him a cent. I think it was simply a mistake.

Q. Well, you are unable to give any explanation of why those bills run to Charles Young except one there that has the head cut off and one other?

A. I can explain why these heads were cut off if you wish. I did that myself, and I know just why I did it.

Q. That is not what we are talking about. I want to know why it is that all the bills run to Charles Young.

A. I have already said I do not know, and I cannot tell. It is a matter of thoughtlessness, probably, on my part. Charles Young was not doing business there.

Q. You say you footed up this inventory after you got to Miles City, eh?

A. Yes, sir.

Q. And not before?

A. Not before.

Q. Do you mean it was drawn out as it now stands in other respects, and then you went to Miles City and footed it up; is that what you mean?

A. If you will hand me that book I will explain what I mean.

Q. Well, answer me first.

A. Well, make your question plain, Mr. Warner.

Q. I want to know whether or not this inventory was
178 taken and these goods written here, and then you went to Miles City and footed it up. Is that what you mean?

A. The articles were written in there and the price of each was written. Then, after I went to Miles City, I multiplied the article by the price and carried out and then footed up. I carried out and footed up.

Q. Then these books were made partly in Forsyth and partly in Miles City, were they?

A. I don't know where the books were made, I am sure.

Q. Yes; you understand me, but that is smart. I want to know whether these entries were made partly in Miles City and partly in Forsyth.

A. The entries were all made in Forsyth.

By the COURT:

Q. Do you mean, for instance, that you put down a number of pounds or yards and the price per pound or per yard and then you figured up after you got to Miles City what the amount was?

A. Yes, sir.

By Mr. WARNER:

Q. You are just as positive of that as you are of anything else you have said here, are you?

A. Yes, sir.

Q. Did you carry the same pen and ink bottle to Miles City?

A. Is it written in ink?

Q. Well, did you carry the same pen and ink bottle to Miles City?

A. I don't know.

Q. You don't know whether it was written in ink or whether it was written in pencil?

A. I think I used the same kind of ink. I think it was Carter's violet ink. I think that is the ink that I used. I know that was my preference.

JOHN M. BOHRER, sworn as a witness in behalf of the plaintiffs in rebuttal, testified as follows:

179 Q. Are you a member of the firm of Bohrer & Hulsick?

A. No, sir; I represent Mrs. Bohrer's interest in that firm.

Q. Well, you are connected with the firm, then?

A. Yes, sir.

Q. Did that firm sell goods to Charles Young prior to his assignment?

A. Yes, sir.

Q. Do you recollect of that firm receiving a remittance of some $800 after the assignment?

A. Yes, sir.

Q. From whom?

A. It came from—in a letter. Let me refresh my memory on that. I have got the letter. That will be probably the best.

Mr. WARNER: The letter is the best evidence of whom you received it from.

Q. What time did you receive that money?

A. Allow me to refresh my memory from the books.

Q. Yes.

A. I received it May the 12th.

Q. What amount?

A. $817.15.

Q. State whether you communicated the fact that you received that money to one of the firm of Beaupre, Keogh & Co.; and, if so, when and what communication you made to them upon the subject.

A. I told Mr. Keogh that we had received that amount of money.

Mr. WARNER: I object to this as not competent in rebuttal.

The COURT: You may ask.

Exception by the defendants.

Q. What did you tell him?

A. I told Mr. Keogh that we had received a remittance of $800 from the Young affair.

Q. Did you tell him from whom you had received it?

180 A. I think I must have stated pretty much in that same way.

Q. Well, what did he say?

A. Well, we were talking at the time; we spoke about the honesty of Charles Young; we were speaking about the probability of the outcome of that affair.

Q. How long after you received this remittance was the conversation?

A. I think it was within a day or two. I did not answer one question—as to the letter which that remittance came in. There is the letter.

The letter produced by the witness was then read to the jury, dated Forsyth, May 4th, 1883, to Bohrer & Hulsick.

Cross-examination:

Q. Well, I see this letter that has just been read speaks about sending goods to Livingston. Were there two places of business—one at Livingston and one at Forsyth?

A. No, sir; I think not; at least there was no regular place; my understanding. I will explain my understanding: that Mr. Young had formerly been operating back and forwards on the road at one place or the other, and told me sometimes to send goods to one place and sometimes to another, as he had been trading backwards and forwards.

Q. Well, did you fill the orders called for by this letter?

A. I presume we did.

Q. Who did you send them to?

A. That I couldn't say without reference to the books. The ledger account closes with—the last item charged on the ledger account of Mr. Young was April the 4th.

Q. Well, it might be so entered, headed on your book, but I want to know how it was billed. Your can't tell that, you say?

A. I can't tell that; no, sir.

Q. Did you go on dealing with Charles Young at any point during that summer?

181 A. We dealt with Charles Young; yes, sir; that summer.

Q. At the park or Forsyth?

A. At the park.

Q. At any other place?

A. He had a brother at, I believe it was, Livingston, and was there attending to his business, trading in some way. All the goods for the park we shipped by Livingston.

Q. I see that he says at the end of his letter, "Send us four hundred pounds of butter to Forsyth, medium quality, and address as before. Send this butter first ordered." Signed, C. Young. How had you addressed this before—to C. Young or to Winchester?

A. Well, prior to the assignment we always addressed to C. Young.

Q. Well, is that what this means, "address as before," address Charles Young?

A. That I couldn't give you any idea about, because I don't know.

Q. You did't show this letter to Mr. Keogh, did you?

A. At this trial?

Q. You didn't show Mr. Keogh this letter?

A. I never showed that letter to anybody since the trial, but I showed it to both——

Q. I am speaking of the time you had a talk with him. You didn't show Mr. Keogh that letter?

A. No; I didn't show Mr. Keogh that letter. I don't think I ever showed anybody that letter until this trial came up. In fact, I had a good deal of hard work to find it.

Q. The account that he alludes to here is the Charles Young account that he wants you to put this on?

A. That was put on according to the way the books show. That went onto that Charles Young account.

The letter introduced in evidence as above was marked Exhibit AA.

Q. That is your recollection. You say you had a talk
182 with Mr. Keogh a few days after that letter?

A. Yes, sir.

Q. After you got this money?

A. Yes, sir.

Q. That, as you remember it, you told Mr. Keogh that you had got $800 from Charles Young?

A. From the Charles Young affair, I think, if my memory serves me right. We had spoken prior to that, after we got word of the assignment, in reference to the matter.

Q. Did you go out there yourself at the time?

A. Not at the time, but I had been out there before.

Q. Do you mean before the assignment?

A. Yes, sir; before the assignment.

Q. You have not got a duplicate of the bills you sent out there—duplicate invoices?

A. We have the entries on the books as they were made. I presume we have got the shipping bills. We have got everything connected with it, probably.

Redirect examination:

Q. To whom were the goods charged that were sent out?
A. What goods do you refer to?
Q. Ordered by this letter.

Objected to as not the best evidence.

The COURT: Have you got your books here?
WITNESS: I have got a copy of the ledger.

Q. Well, from the ledger.

Mr. WARNER: I object to the answer on the ground that it is not the best evidence.
The COURT: Well, I suppose it is not the best evidence.

Q. To whom were the goods shipped—those shipped to Forsyth? How were the goods marked is the meaning of that question.
A. I couldn't tell you that.
183 Q. What date did you say the account against Charles Young closed?
A. The last charge on the account appears April the 4th, and the last credit when the balance is carried forward to the assignee account was May 12th; that is the $800. Then there was a balance struck and carried forward onto the Winchester account.
Q. On what account?
A. "Charles Young, C. A. Winchester, assignee."

By Mr. WARNER:

Q. What do you mean by closing an account? Isn't it a fact that you kept right on making these charges just as you had been making them when you heard of the assignment? You simply wrote opposite the same account in red letters the name of C. A. Winchester, assignee?
A. No, sir; when the first charge is made in that way the ledger is opened in that way.
Q. Well, ain't it the fact that the account stands on the book of the original entry as Charles Young, and then right opposite is written "C. A. Winchester, assignee"?
A. Yes, sir.
Q. That is what you mean?
A. That is what I mean. It was done at the time. It is Mr. Hullseik's plan of doing it. He has other accounts on the books in the same way.
Q. The money that was received from C. A. Winchester, the last money that came from him, what became of it? Who did it go to?
A. It went to the credit of C. A. Winchester.
Q. I know, but what did you do with it?
A. We credited it on the book.
Q. Well, I know, but what did you finally do with it?
A. Well, that is the last I heard of that money.

Q. Wasn't it turned over to Noyes Brothers & Cutler?
A. No, sir; not that money.
Q. I don't mean those identical bills, but was not the
184 same amount that was sent turned over to Noyes Brothers & cutler?
A. Afterwards we paid to Noyes Brothers & Cutler $168 and some cents.
Q. Just the exact amount that was gotten from Winchester, wasn't it?
A. On the credit of January the 17th, $168.30; on January 22nd, debtor of $168.30, and June 30th, $167.17.
Q. Then the same identical sum that was received from Winchester you, within two or three days, paid over to Noyes Brothers?
A. Yes, sir.
Q. Did he come up for it or did he send a clerk?
A. Well, that I can't tell.

Redirect examination:

Q. You were one of the parties that were in the pool spoken of—your firm?
A. Yes, sir.
Q. The last payment that you speak of there—$100 and how much?
A. $168.17.
Q. What was that on account of?
A. Well, I suppose it is the same account—expenses some way or other.

J. N. GRANGER, recalled on behalf of the plaintiffs in rebuttal, testified:

By Mr. GILMAN:

Q. When and where did these invoice books marked Exhibit F come into your possession?
A. They were handed to me by Mr. Winchester about four o'clock or half past four in the afternoon of the day I arrived in Miles City—at the hotel in Miles City, Montana.
Q. What day of the month was that?
A. I arrived there in Miles City on Monday, the 14th day of January, about noon.
185 Q. January, 1884?
A. Yes, sir; and it was about four o'clock or five o'clock that afternoon; just afterwards.

By the COURT:

Q. Just after your arrival?
A. Within four hours after my arrival.
Q. Have they been in your possession ever since?
A. As soon as I finished looking at them I put them into my bag nd locked them up and brought them back to St. Paul with me—lso the invoice book—and placed them in a fire-proof vault here,

and they have remained in my possession up to the time that they have been brought into court. Mr. Winchester has never seen them or touched them until the preparation of this trial, within the last ten days.

Cross-examination by Mr. WARNER:

Q. You say you got to Miles City at what time of day?

A. Well, I think the train got in at half past eleven or a quarter to twelve that morning. I know we were in Glendive early in the morning—about breakfast time.

Q. What time was it that you made this trade with Winchester?

A. Tuesday morning; the next day.

Q. You say you saw these books the afternoon of the day you got there?

A. Yes, sir.

Q. Do you remember what you said about that yesterday or day before?

A. No, sir; I do not. I have looked up the calendar to see when I arrived here. I am positive now.

Q. I want to know what you said about it yesterday.

A. I don't remember, sir.

Q. Didn't you tell the jury yesterday that you didn't see these books at any time before or while you was making that trade?

A. I don't remember that I did.

186 Q. Well, if you said it you can remember a day, can't you, if you can remember two years?

A. Yes, sir.

Q. Didn't you say in substance yesterday that you didn't see these invoices until after that trade was made?

A. Possibly I may, but I remember now particularly about it.

Q. Well, if you said it yesterday why do you take it back to-day?

A. Because I have looked at the calendar of that month and found out just how long I was in Miles City.

Q. Well, the calendar wouldn't show whether you saw these books or not?

A. Well, by that means I located my movements in Miles City at that time, and I remember particularly Mr. Winchester coming to the hotel that afternoon after I had been looking for him, and of his being pointed out to me, and my taking him to the room, and in the course of the conversation as to what stock he had there his saying to me that he had an inventory of the complete stock, my sending him for them; that he brought them back to me and handed them to me; it must have been about four or a little after four that afternoon. The next morning, the 15th, the trade was made.

Q. Your memory is so confoundedly good on that, why couldn't you have said that yesterday? Why did you say yesterday that you never saw them until after the trade was made?

A. I don't remember that I said so, but if I did, it was without giving the matter any particular thought as to when those things came into my hands.

Q. You would not forget such an important transaction as that?
A. I might forget the date as to when it took place, but it is precisely as I state at the present moment.

187 FRANK KEOGH, recalled as a witness on behalf of the defendants in rebuttal, testified:

By Mr. WARNER:

Q. It is Mr. Bohrer's recollection that he met you, as he says, some few days—I don't know exactly when—after May 12th, when he had got this $800, and that he told you of having received it. What is your recollection about that?
A. I have no recollection of it.
Q. Of his having said anything of that kind to you?
A. No.
Q. What is your recollection as to the time when you heard that he had got this $800?
A. Well, it was some time after, as I testified yesterday or day before; it was some time after this thing that occurred.
Q. Did he show you this letter?
A. No, sir.
Q. Was it a conversation that you finally had with him on the street?
A. Well, I can't tell. I don't remember the conversation at all.
Q. I mean the one you finally had with him, the one you do remember of.
A. It was a conversation.
Q. Well, was it a street conversation?
A. A street conversation, I suppose. I don't know where I would meet Mr. Bohrer. I would meet him sometimes on the streets; sometimes ride home together; I don't know exactly where.

No cross-examination.

Counsel for the defendants offers in evidence certified copy of the complaint made by C. A. Winchester against the sheriff, dated February 10th, 1885.

188 Objected to as immaterial and irrelevant. Objection overruled, and exception by plaintiffs.

The foregoing contains and refers to all the testimony offered and introduced upon the trial of this action.

The jury were here excused until Monday morning, June 29th, at 10 o'clock a. m., and court thereafter adjourned.

Court having convened on the morning of June 29th, pursuant to adjournment, Mr. Warner addressed the jury on behalf of the defendants, and Mr. Gilman on behalf of the plaintiffs. Pending Mr. Gilman's argument the court took a recess until 2 o'clock p. m.

Court having reconvened at 2 o'clock p. m., Mr. Gilman proceeded with his argument to the jury.

After argument on behalf of respective parties the court instructed the jury as follows:

GENTLEMEN OF THE JURY: This action is brought by these plaintiffs, claiming to be the owner of certain goods by virtue of a bill of sale from Clarence A. Winchester, assignee of Clarence Young, against the defendants, who attached and sold the goods in question under the writs which have been introduced here in evidence.

It appears that on the 27th day of April, 1883, one Charles Young, who had been engaged in mercantile business at Forsyth, Montana, and who was at the time indebted to the plaintiffs and defendants and other parties in St. Paul and elsewhere, made an assignment of all his property to one Clarence A. Winchester for the benefit of his creditors.

Winchester was, immediately previous to the assignment, the clerk of Young.

These parties, plaintiffs and defendants, were informed of the assignment shortly after it was made, and that it was the intention to pay all the creditors as fast as it could be done; that in order to dispose of the assigned property to advantage it was deemed advisable to purchase other goods and continue the business;
189 that certain moneys were sent to the defendants in part payment of the indebtedness of Young to them and also to other creditors of Young, and goods were ordered from time to time from the defendants and other creditors. These goods, as I say, were ordered from time to time from these defendants, who opened an account with Mr. Winchester as assignee and received payments from time to time on account until some time in December, 1883, or perhaps in September, when, there being a balance due on the old account of Young, as well as upon the assignee's account, the defendants sued Young and Winchester and attached these goods, claiming that the assignment of Young to Winchester was fraudulent and void.

The business had been carried on after the assignment in the same store previously occupied by Young with the assigned goods and with these new goods that were obtained from the defendants and other parties, both Young and Winchester being there and engaged in the store a portion of the time—sometimes Young being there when Winchester was absent and Winchester being there sometimes when Young was absent. Soon after the attachment the plaintiffs obtained a bill of sale of these goods from the assignee and brought this action, claiming to be the owners, against the defendants, who had seized them under their attachment. The defendants claim in the first place that this bill of sale was not a valid one, that it was a sham, that it conveyed no title to this property, and was merely given to enable the plaintiffs to bring this suit. They claim, further, that this assignment from Young to Winchester was all a sham; that it was intended to keep off Young's creditors and give him a chance to continue his business without the interference of his creditors, and that it was void as against them. They claim it was void especially because there was no actual transfer of the goods to the assignee, as required by the statutes of Montana, and the business, as they assert, was actually carried on by Young himself, just as
190 it had been before the assignment. The plaintiffs, on the other

hand, claim that the sale by the assignee to them was a *bona fide* transaction, made for a special consideration; that there was no fraud in the assignment of Young to Winchester; that there was an actual transfer of the possession of the assigned property to the assignee, and that the possession continued in him until the seizure of these goods under the attachment; that whatever informality there may have been in conducting the business after the assignment it was conducted as it was with an honest intention to dispose of the property to the best advantage of the creditors. They claim, too, that whether the assignment was a valid one or not the defendants cannot be permitted to dispute its validity in this suit, because they assented to it and received payments under it and thereby ratified it.

As to the effect of this bill of sale: Was this a real purchase by these plaintiffs? The testimony of Mr. Noyes is that the plaintiffs sent Granger up there, in connection with other creditors, to inquire into this matter and see what was best to be done; that Granger had authority from the plaintiffs to purchase the goods for them; that the plaintiffs paid the money, $600, as Mr. Granger and Mr. Young testify was the agreed price for these goods, and Mr. Granger testified that he personally made the negotiations with Mr. Young for the purchase. He testifies, among other things, that he told Mr. Winchester that he could not expect that he should pay the full value for the goods; that he was buying probably into a lawsuit, and wished him to make the best offer he could, and Young made the offer, which he accepted, and that he drew for the $600, received the money, and paid it over to the assignee; and he testifies that there was no agreement or understanding upon the part of himself and Winchester that there should be any repayment of this money, but that the sale was a real, *bona fide* sale.

191 If this purchase was made as testified to by the witnesses on the part of the plaintiffs and the money was paid and no agreement that it was to be paid back and it was not paid back, then it was a valid sale if this assignment was good as against these defendants—that is, if Winchester had authority to sell. The amount paid was a sufficient consideration in law, and the fact that it was less than the actual value of the goods does not invalidate the sale.

It is claimed by the defendants that this money that was paid afterwards came back into the hands of the plaintiffs by reason of its being paid out by Mr. Winchester as a part of the assets of the assigned property to some of the creditors who afterwards entered into this pool, which has been testified to by the witnesses, by which they agreed to share the expenses both of paying Mr. Granger for his trip up there and for paying any expenses of obtaining the possession of these goods. Now, these facts which are testified to by these witnesses do not invalidate the sale. The bill of sale is under seal and imparts a consideration, and is *prima facie* evidence in the absence of any proof of fraud; and I have to say to you, gentlemen, that I find no proof here in evidence before you of any fraud in that transaction that would invalidate that bill of sale.

As to the assignment: The law allows an insolvent to assign his

property for the benefit of his creditors. If this is done in good faith and for the purpose of having his property faithfully distributed for the payment of his debts it is a valid transaction. If it is done, however, for the purpose of reserving some benefit to himself; if it is done to hinder or delay his creditors in making their claims out of his property; if there is any secret trust by which he reserves any interest in the property, the assignment is void as against the creditors; they may disregard it and attach the property the same as though no assignment had been made. The law requires the property of an insolvent to be devoted to the payment of his debts;
192 his creditors have a right to pursue the means provided by law for collecting their claims, and they have the right to the process of the courts for that purpose whenever their claims become due without let or hindrance or delay, and if a party makes an assignment for the purpose of hindering or delaying his creditors in the prosecution of their claims that purpose will render the assignment invalid in law just as an actual intention to defraud. It is regarded in the law as a fraud, because they have a right to go on and pursue the usual remedies against his property, and he has no right to take any measures that would prevent them from so doing in the ordinary course of law. But when the assignment is intended to apply all his property in good faith to the payment of all his debts as fast as it can be reasonably disposed of, then the law recognizes and will not allow creditors to levy on it to pay their individual debts. The assignee then becomes the owner of the property as a trustee for all the creditors, with authority to sell and dispose of and distribute it *pro rata* among the creditors according to their claims.

The statute of Montana, gentlemen, requires that the assignment must be followed by the immediate and actual delivery of possession to the assignee and by the continued possession of the assignee during the assignment, and if that is not done the assignment is void as against creditors. The possession must be actual; the actual control of the property must be in the hands of the assignee. I do not mean by that that the assignee must actually have his hands upon the goods or actually be in the store all the while, but he must have the actual control of the property which has been placed in his hands under the assignment.

Now, Winchester and Young both testify that immediately after this assignment Mr. Winchester was placed in possession and took possession. They testify that Young was employed a portion of the time simply as a clerk for the assignee. The assignee, gentlemen,
193 had a right to employ clerks for the necessary transaction of the business, and he had a right to employ Mr. Young if it was a real employment; but if this was a mere colorable employment; if it was a sham; if it was intended to give Young the real management of the property with a view of enabling him to use the property for his own benefit, then it was a fraud upon the creditors. The defendants claim that the employment of Young as the clerk was a mere pretence; that the circumstances in evidence, the manner in which the business was conducted, the language of

the letters in evidence from Young and Winchester to the creditors, the manner in which payments to the creditors were made, no dividends being declared and they paying without reference to any *pro rata* distribution, and especially the payment to Bohrer & Hullsiek of some $800 upon their claim of $1,100 when compared with the payments to other creditors, all go to show that there was no actual delivery of possession to Winchester, and that Young was in the actual control of the store and the goods and was conducting the business at his own will and pleasure, and not for the purpose of protecting and paying the creditors.

It is for the jury to say whether this was an honest assignment, made for the sole purpose of converting all of Young's property into money as fast as could reasonably be done and applying it to the payment of his creditors, or whether it was made with the intent to hinder, delay, or defraud his creditors. If you find that this assignment was invalid and could have been disregarded by his creditors by reason of being fraudulent, then it will be for you to consider whether it was assented to and ratified by these defendants.

These provisions of law in reference to assignments are intended for the protection of creditors, and they may waive them if they see fit. It is claimed here that these defendants did so; that the letters of Young and Winchester gave them notice of the manner in which the business was to be conducted; that the business was to be carried on as before and new goods bought and
194 payments made without reference to *pro rata* dividends, and that they went on and sold goods to the assignee and received payments on both accounts—that is, on Young's account and on the assignee's account.

If these defendants had notice as to the manner in which the business was to be conducted and assented to it, and went on sending goods to the assignee and receiving remittances, they are to be regarded as having assented to that mode of doing business, and could not afterwards treat the assignment as void by reason of the business being conducted in that manner.

It is not necessary, gentlemen, to find that they had actual notice of all these matters. If the facts and circumstances within their knowledge were such as would put a person of ordinary intelligence and prudence upon inquiry as to the real facts of the case—if they were such as to lead them to believe that there was a fraudulent purpose and that this assignment was not in good faith and the circumstances were such that they could have been ascertained, that fact could have been ascertained upon proper inquiry, and they neglected to make such inquiry, then they are to be bound to the same extent as if they had had actual notice. It is not enough, however, to bind them in that respect that they should have a mere suspicion that there was something wrong, but the facts and circumstances must have been such as to lead a person, as I say, of ordinary intelligence and prudence, to an inquiry into the case to ascertain whether or not there was fraud in the transaction or anything that would invalidate the assignment.

If the defendants had notice of the manner of conducting the

business, but had reason to suppose and did suppose that it was so conducted in good faith, with a view to the best interests of creditors, but afterwards ascertained facts which showed that Young and Winchester, from the start, intended to cheat and defraud the
195 creditors and were conducting the business with that purpose, and you find that such was the actual intent of the assignor and assignee, and that they carried on the business in pursuance of that intent, then the defendants were not bound by their assent given in ignorance of those facts. They had a right to retract it and pursue their remedy.

If you find, gentlemen, that the plaintiffs here are entitled to recover, under the circumstances of this case, then your inquiry will be as to the amount of damages which they are entitled to recover. Upon that point I charge you that they are entitled to recover the fair value of the goods at the time they were attached by the defendants. If any of these goods were afterwards injured or lost, after they were taken into the possession of these defendants or by the sheriff acting upon their authority—if they were afterwards lost, damaged, or injured—the plaintiffs' right to recover the value of the goods at the time of the attachment is not affected thereby.

As to what is the value of these goods there has been a variety of testimony here. You have had the opinions of witnesses who have seen the goods. There is the testimony as to the amount they sold for at auction. The law allows evidence of sale of goods at public vendue as one species of evidence to get at the value of the property; but, of course, it is not conclusive. It depends very much upon the circumstances under which the property is sold, as to the number of bidders, the information that has been given, and the general circumstances under which the sale is made. It may or it may not be a good and sufficient test as to the value of the property, but the law allows it to be placed before a jury, with the circumstances connected with the sale, to enable them to consider it as one item of evidence in that respect.

You have before you also, gentlemen, the invoices of these goods. You have been told as to how this inventory was made; that it was made somewheres from the first to the fifteenth of December,
196 1883, these attachments being levied on the second or third of January, 1884, and you have the testimony of Mr. Young and Mr. Winchester as to about how many of those goods had been sold after this inventory was made and before the attachment, and you have heard the testimony of the witnesses as to the size of this building, as to its capacity for storage, and as to the extent to which that building and the cellar and places where goods could be stored, how used, and as to the amount of goods they would hold, and as to how far they were filled up by the goods that were there. All these matters are proper to be taken into consideration by the jury; and, in connection with this inventory, you will remember that the witness stated that it was made out from the cost price—that is, the cost price where the goods were purchased, with the freights from the place of purchase to Forsyth added—and they

testify to the fact that the goods were worth at least that amount at the time they were attached.

Gentlemen, I charge you that "if Winchester was in the store exercising dominion over the goods as assignee, that was sufficient possession by him to protect his title as against any attaching creditors. He could employ Young as his agent or clerk to assist in the business, and such employment would not prejudice his rights as assignee to the property. His temporary absence, leaving Young in charge of the store as his clerk or agent, would not prejudice his rights as assignee nor subject the goods to attachment. Possession of Young as clerk during such temporary absence of Winchester would be the possession of Winchester."

And in that connection I call your attention to the general charge that if this employment of Young was a sham and a mere pretense and was not in good faith, but he was employed with the intention of giving him the control of the property, so that he could dispose of these goods for his own advantage, without reference to the
197 advantage of the creditors, why, then the employment of him and his possession would not be the possession of the assignee, and it would not be such a possession as is required by the statute of Montana.

The sale of the goods by Winchester to the plaintiffs vested in them all the title that Winchester had as assignee, and the consideration paid by the plaintiffs is wholly immaterial in this inquiry, and the defendants cannot question the validity of that sale upon the ground that the plaintiff did not pay full value for the goods.

I charge you, gentlemen, that even if the defendants had received no money from the assignee on the Young account, yet if they were informed or could learn from the letters received as to the mode or manner the business was to be conducted under the assignment and assented thereto by filling orders and receiving remittances, they cannot now turn around and urge such mode or manner of doing the business as a justification for their attachment.

You will bear in mind, in connection with this, what I said to you, that if the defendants afterwards ascertained that the original intent in making this assignment was to actually defraud their creditors and that they were engaged in carrying out that fraud, that they were not bound by their assent, made in ignorance of that fact, if it was so made.

I charge you "that if Young was employed as clerk or agent by Winchester to assist in the business there was nothing improper in his writing letters and ordering goods on behalf of Winchester. If the goods were received by Winchester and put into the common stock it was immaterial whether they were billed to Young or Winchester."

I charge you, "if the plaintiffs are entitled to recover they are entitled to the full and fair value of all the goods seized upon attachment at the place and time when and where so seized, with interest thereon."

You will of course, gentlemen, allow, if you find for the plaintiffs,

interest on what you find to be the value of the goods from the second or third of January, the time when they were attached.

198 I am asked to charge as follows: "If a debtor has property sufficient wherewith to satisfy all his debts in full he cannot make a valid assignment; but if Charles Young supposed and believed when he made his assignment to Winchester that he had property sufficient wherewith to pay all his debts, then his assignment was fraudulent and void when it was made."

Now, the rule with reference to that, gentlemen, I understand to be this: That if a person has goods that are more than sufficient to pay his creditors in the ordinary conduct of the business, and with that knowledge he makes an assignment of the property for the purpose of preventing any sacrifice by a sale under judicial proceedings, that he has no right to make an assignment under that state of the case; but if he has goods which in his opinion might, if the business was properly conducted, pay all his debts, but would not pay his debts if the creditors should all come upon him, and would not yield enough to pay all his creditors, then he has a right to make an assignment in good faith of these goods to an assignee, giving him the authority to turn them into money with all reasonable speed, and distribute them for the benefit of his creditors. He is not authorized, however, to assign where he has a large amount of property, more than sufficient to pay his debts, simply for the purpose of preventing a sacrifice which may injure him personally.

"When a debtor is insolvent and has not property sufficient wherewith to satisfy all his debts in full, then he may transfer his property to a third party in trust, that such third party shall, as soon as he reasonably can, convert the property into money and distribute the proceeds among the debtor's creditors. If in such a case the debtor has in his mind any other object or purpose in making the assignment, then his assignment, no matter how regular or fair it may be upon its face, is condemned by the law and is fraudulent and void."

I so charge you, gentlemen, with this proviso, that if he
199 has in his mind any other object or purpose in making his assignment inconsistent with the application of his property to the payment of his debts in full as soon as they can reasonably be disposed of, then his assignment would not be valid in law.

"If, therefore, Charles Young, when he made this assignment, contemplated and intended that the business should be continued in the name of Clarence A. Winchester as assignee, the same thereafter as theretofore and in the usual course of trade, that no dividends should be made, but that payments should and would be made upon the old debts when and as might be convenient under such a course, then his intent was illegal and his assignment was, in fact, fraudulent and void as against his creditors not assenting thereto with knowledge of the fact."

"This assignment having been made in Montana, and the goods being situated there, the transaction is to be judged by the laws of that Territory, and they provide that every assignment of goods and chattels, unless the same be accompanied by the immediate de-

livery and followed by an actual and continued change of possession of the thing sold and assigned, shall be conclusive evidence of fraud as against the creditors of the person making such assignment. And the term creditor as here used includes all persons who are creditors of the assignor at any time while the assigned goods remain in the possession of the assignor;" I so charge you.

I also charge you "that these provisions of the Montana laws are not satisfied by a mere nominal change of possession; there must be an actual and a continued change of possession in fact"—

That is to say, there must have been such a change of possession as gave the assignee the control of the goods, to be managed by him for the benefit of the creditors; but the mere fact that he had employed another person as a clerk or as an assistant so long as
200 he retained the control and management of the business himself would not render the assignment invalid.

I charge you farther, at the request of the defendants, "that if you find that any witness in the case has wilfully testified falsely as to any material fact, then you are at liberty to wholly disregard his testimony except in so far as it is corroborated by other testimony or the facts appearing in the case."

Gentlemen, if your verdict is for the plaintiffs it will be that you find for the plaintiffs and assess their damages at such amount as you shall find it to be. If for defendants, it will be simply that you find for the defendants.

Counsel for the plaintiffs except to the refusal to charge certain requests.

Mr. WARNER: I wish to take an exception as to that part of the charge which relates to the bill of sale made by Winchester to the plaintiffs, claiming that the repayment to the plaintiffs of the identical sums which those creditors received should be taken as evidence and that the jury should have the right to regard it as evidence that this was a mere sham.

The next is that under the Montana law it is not enough for an assignee to have a constructive possession, and if the assignor has the apparent control that the law means that there should be a visible and evident change of possession.

The third matter to which I want to call your honor's attention and concerning which I take exception is on the question of the estoppel. I claim that the defendants in this case are not estopped in this case to attack the assignment unless it appears that they had knowledge or notice of what was being done; that the fact that they assented to the goods being purchased does not carry with it the effect of an estoppel. They are only estopped to the extent
201 that they had knowledge or notice. The estoppel only extends to what they had due knowledge or notice of at the time.

Defendants' counsel also excepts to the granting of the plaintiffs' first request; also to the second and third requests; also excepts to the refusal of each of the requests on the part of the defendants, which were refused.

The jury thereupon retired to deliberate upon their verdict, a sealed verdict being consented to.

The jury returned the following verdict:

We, the jury in the case of Noyes Bros. & Cutler *vs.* Beaupre, Keogh & Co., do find a verdict for the plaintiffs and assess the damage at $2,752.04, with interest from date of the attachment, January 2, 1884, $288.96; total damages, $3,041.

(Signed) A. C. ELLIOTT, *Foreman.*

St. Paul, June 29, 1885.

Counsel for the defendants asked the court to charge as follows:

"It is a conceded fact in this case that Winchester was a clerk in the employ of Young when this assignment was made, and that both parties continued operating the store from the date of the assignment until some time about the middle of June, 1883, and that Young and Winchester both operated the store from some time in November, 1883, down to the time that Winchester left and went to Miles City, and that when the suits in question were commenced and attachments were made the store and goods were in the actual custody of Young, and under these undisputed facts and circumstances this assignment was conclusively fraudulent as against the creditors of Charles Young while he was in the possession of the assigned property. It is not enough that Winchester had a constructive possession while Young had the actual possession; there-
202 fore at the time of the attachment the Young assignment was unquestionably fraudulent as against the creditors of Charles Young."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"It is claimed on the part of the plaintiffs in this case that Beaupre, Keogh & Co. were estopped and debarred from attaching the property covered by this assignment if they had once assented thereto, and upon that branch of the cause I charge you as follows:

"There is evidence in this case tending to show that Beaupre, Keogh & Co., upon being informed of Young's assignment, caused an investigation to be made concerning it, and after that they did assent to it, but they had a right to suppose that the real intent with which it was made was that which was expressed upon its face. They were not bound to go to Charles Young and ask him whether he really intended that which the assignment expressed. There was nothing on the face of this assignment to indicate that the business was to be prosecuted thereafter as theretofore, or that no dividends were to be made, or that payments were to be made on the old debts as might become convenient, or anything of that sort. Therefore they cannot be deemed to have ever assented to anything of that kind without notice thereof was brought home to them in some manner, and they were not precluded from attaching the prop-

erty because of their assent unless the jury find from the evidence that they knew or had notice of Young's illegal intention, if any such there was. It appears that Beaupre, Keogh & Co. had notice that further goods were to be obtained, but that would not indicate to them that the business was to be continued as usual, or that no dividends were to be made, or that payments on the old debts were to be made only when convenient, and if that was the scheme
203 of the assignment, then Beaupre, Keogh & Co. cannot be deemed to have assented thereto without knowledge or notice of such a scheme."

Which request the court refused; and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"It is further claimed on the part of the plaintiffs that Beaupre, Keogh & Co. had no right to attach the property conveyed by the assignment without first returning to Winchester the money received by them with the letter of May —, 1883, and upon that point I charge you as follows:

"That the remittance was not, under the evidence as it stands, authorized by the assignment. Winchester's powers and duties were such and such only as the assignment prescribed. He had a right and the power to declare and pay dividends out of the proceeds of the trust property. The assignment did not confer upon him power or authority to make payments otherwise upon the old debts. Consequently that money cannot be regarded as having been paid under the assignment so as to warrant the claim that it should have been repaid to Winchester as a condition precedent to attacking the assignment.

If the annulling of the assignment would have operated to render that money the property of Winchester at law or perhaps in equity, then it would have been the duty of Beaupre, Keogh & Co. to have paid or tendered it to Winchester before attaching, provided it was paid under the assignment; but when a debtor has become insolvent and has not sufficient property wherewith to discharge his debts, then he has no valuable interest in his property, and all of the same belongs in equity to his creditors, and in this case, if the Young assignment was really fraudulent and void, then neither Young nor Winchester had any equitable right to this money, and there was no obligation to refund it to them or to either of them as a condition precedent to an attempt by law to recover the residue.
204 If Winchester had purchased the property from Young and this money had been paid to Beaupre, Keogh & Co. as part of the purchase-money, then the case would have been such as to devolve on them the duty of refunding the money if they desired to impeach the sale, but an assignee is not a purchaser; he pays nothing."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"If Charles Young and Clarence A. Winchester or either of them

had a leviable interest in the goods or in any of them, then the plaintiffs cannot recover in this action. If any of the goods in controversy belonged to Charles Young, then he had a leviable interest in them, and so of said Winchester."

Which request the court refused, and to such refusal so to charge the defendants then and there excepted.

Counsel for the defendants asked the court to charge as follows:

"If any of the goods taken by the sheriff belonged to Charles Young and the same were commingled by said Winchester with the rest so that the sheriff could not distinguish the one from the other, then it was the duty of the plaintiffs to point out which goods belonged to them, and if they did not do so they cannot recover in this action."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the courtt to charge as follows:

"The records in the two suits pleaded in the answer are entitled to the same force and effect in Minnesota that they have in Montana, and inasmuch as the plaintiffs or their assignor did not intervene or claim the goods in said suits or in either of them they are precluded in maintaining this action."

205 Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"Under the evidence, if the defendants are bound by the assignment, so are the plaintiffs, and the one had no more right to possession under a sham bill of sale from the assignee, obtained without consideration, than the other had in virtue of the levy of an attachment."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"Under the laws applicable thereto the defendants' attachment was paramount to the Young assignment and created the better title."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"If the sheriff of Montana was holding the property under a writ in addition to the writs of the defendants, then their neglect to surrender did not constitute a conversion of the goods by them, and plaintiffs cannot in such case hold them for the value of the property."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"If no demand has been made on the sheriff of Custer county, Montana, sufficient by the laws of that Territory, then the plaintiffs cannot maintain this action."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

206 "In the absence of proof to the contrary the laws of Montana are presumed to be the same as those of Minnesota."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"Under the evidence the Young assignment is void because not filed in the office of the clerk of the district court of Custer county, Montana."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

"Under the evidence the pretended transfer to the plaintiffs is void because it does not appear that Winchester ever gave bond as assignee under the Young assignment or had power to sell."

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Counsel for the defendants asked the court to charge as follows:

If it was mutually understood that the assignment was not to be carried out, but that it was to be ignored and treated as a dead letter, then the defendants are not precluded from so treating it, and the assignee cannot afterward set it up as a defense against an attachment, nor can the plaintiffs.

Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted.

Assignment.

Chas Young to C. A. Winchester.

This indenture, made the 27th day of April, A. D. 1883, between Charles Young, of Forsyth, in the county of Custer, Territory

207 of Montana, party of the first part, and C. A. Winchester, of Forsyth, county and Territory aforesaid, party of the second part, witnesseth:

That whereas the party of the first part is indebted to divers persons in sundry sums of money which he is unable to pay in full, and is desirous of providing for the payment of the same so far as is in his power by an assignment of all his property for that purpose:

Now, therefore, the said party of the first part, in consideration of the premises and the sum of one dollar to him in hand paid by the party of the second part upon the ensealing and delivery of these presents, receipt whereof is hereby acknoweldged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, his successors and assigns, all and singular the lands, tenements, hereditaments, appurtenances, goods, chattels, stock, promissory notes, debts, claims, demands, property, and effects of every description belonging to the party of the first part, wherever the same may be, a full and complete schedule of

which is hereto annexed, marked "Exhibit A," excepting only such property as is exempt by law from levy and sale under execution; to have and to hold the same and every part thereof unto the said party of the second part, his successors and assigns, in trust, nevertheless, to take possession of the same, and to sell the same with all reasonable dispatch, and to convert the same into money, and also to collect all such debts and demands hereby assigned as may be collectible, and with and out of the proceeds of such sales and collections—

I.

First. To pay and discharge all the just and reasonable expenses, costs, and charges of executing this assignment and of carrying into effect the trust created, together with the lawful commisson to the party of the second part for his services in executing said trust.

II.

208 Second. To pay and discharge in full, if the residue of said proceeds are sufficient for that purpose, all the debts and liabilities now due or to become due from the said party of the first part, a full list of *whom*, with the amount due to each, is contained in a schedule hereunto annexed, marked Schedule B, with all interest money due or to become due, and if the residue of said proceeds shall not be sufficient to pay the said debts and liabilities and interest money in full, then to apply the said residue of said proceeds to the payments of said debts and liabilities, ratable and in proportion.

III.

Third. And, if after the payment of all the said debts and liabilities in full there be any remainder or residue of said property or proceeds, to repay and return the same to the said party of the first part, his executors, administrators, and assigns.

And in furtherance of the premises the said party of the first part does hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trusts hereby created, and to ask, demand, recover, and receive all and from all and every person or persons all debts and demands due, owing, and belonging to the said party of the first part, and to give acquittances and discharges for the same, to sue, prosecute, and defend and implead for the same, and to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances.

And the said party of the first part does hereby authorize the said party of the second part to sign the name of the said party of the first part to any check, draft, promissory note, or other instrument in writing which is payable to the order of the said part of the first part or to sign the name of the said party of the first part to any instrument in writing whenever it shall be necessary to do so to carry into effect the object, design, and purpose of this trust.

209 The said party of the second part doth hereby accept the trust created and reposed in him by this instrument, and covenants and agrees with the said party of the first part that he will faithfully and without delay execute the trust created according to the best of his skill, knowledge, and ability.

In witness whereof the parties *of* these presents have hereunto set their hands and seals the day and year first above written.

CHARLES YOUNG. [SEAL.]
C. H. WINCHESTER. [SEAL.]

Signed, sealed, and delivered in presence of—
H. R. MARCYS.
M. B. SANDMEYER.

TERRITORY OF MONTANA, } ss:
County of Custer, }

On the 27th day of April, A. D. 1883, personally appeared before me, a justice of the peace in and for said county, Charles Young and C. A. Winchester, personally known to me to be the persons described in and who executed the foregoing instrument, *and* who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

HIRAM R. MARCYS.

SCHEDULE B.

The following is a full and true inventory of all my debts and liabilities of every kind and character so far as I am able to ascertain the same:

Noyes Bros. & Cutler, St. Paul	$425 21	Beaupre, Keogh & Co., St. Paul	$1,080 43
Bohrer & Hulsick, St. Paul	1,079 47	C. B. Towers, Miles City	30 00
North Star B. & S. Co., Minn.	116 35	Leighton, Jordan & Co., Miles City	25 00
Sig. Hanauer, Bismarck	337 18	W. E. Savage & Co., Miles City	10 40
210 Lindeke, Warner & Schurmeier, St. Paul.	309 46	A. J. Young, Mich.	600 00
Campbell & Burbank, St. Paul	151 75	Bismarck Tribune	16 92
C. Gotzian & Co.	150 00	George Hibbard, Billings	20 00
Albenberg & Conhaim	75 00	Billings Herald	20 00
J. H. Schurmeier, St. Paul	55 00	McMillan, Miles City	272 90
	$2,729 92		$1,838 75
			2,729 92
			$4,568 67

TERRITORY OF MONTANA, } ss:
County of Custer, }

I hereby certify that the within instrument was filed for record in this office on May 1st, 1883, at 1.30 p. m., and duly recorded in Book A of Agreements, at pages 98, 99.

(Signed) JAMES H. GARLOCK,
County Clerk,
By CHAS. DOUGLAS, *Deputy.*

[The Seal of Custer County, Montana.]

TERRITORY OF MONTANA, } ss:
County of Custer, }

CHAS. YOUNG, the person named in the foregoing deed of assignment, being first duly sworn, says that he has read the foregoing inventory, and that the same is true of his own knowledge.

CHARLES YOUNG.

Sworn and subscribed to this 27th day of April, 1883.

HIRAM R. MARCYS,
Justice of the Peace.

TERRITORY OF MONTANA, } ss:
County of Custer, }

211 I hereby certify that the annexed instrument is a full, true, complete, and correct copy of a certain assignment made by Charles Young to Clarence A. Winchester as it appears on the records of the said county in Book "A" of Agreements, etc., page 98, with the exception of that portion of the said assignment known as "Schedule A."

Witness my hand and the seal of the said county this 6th day of January, A. D. 1885.

[SEAL.]

I. C. DEAN,
County Clerk and Recorder.

EXHIBIT B.

Postal Card Addressed to "C A. Winchester, Esq., Forsyth, M. T.

ST. PAUL, MINN., *May* 7, 1883.

DEAR SIR: Your favor enclosing $100.12 at hand and same placed to your credit—Charles Young's credit. Please accept thanks.

Yours very truly,

$100.12. BEAUPRE, KEOGH & CO.,
Per SEXTON."

EXHIBIT G.

"FORSYTH, M. T., *December* 20, 1883.

Mr. R. M. J. Glynn, station agent:

Please allow Mr. Chas. Young to have any freight or express that may come to your office billed to me.

C. A. WINCHESTER, *Assignee.*"

EXHIBIT H.

"FORSYTH, M. T., *December* 21, 1883.

Mr. Chas. Young, Forsyth, M. T.

DEAR SIR: I arrived here all right and found the folks all well; saw Mr. Millard last evening and he said they were all well; sold

the prairie chickens for 25 cents cash, but they are rather slow; I would not give over 20 in trade there for them, although I
212 think I could work them off here for 25 easy enough. Charge cash with ten prairie chickens @ 25 cts., $2.50; also charge cash with rebate on special poor tax, $2.00, which I collected by presenting our receipt. Credit cash with Bertrand's bill—2 citron @ 40, 2 lemon @ 40; bill of drugs from Lebscher's drug store, 1.10. I could not get them at either of the other places. Charge John Lindquist with stuff for tanning, 1 50

Express on same---- 25

1 75

I will send the stuff direct to him from here and send him a bill; have not sold the skins yet, nor found out about wood; will see about it to-day.

Credit cash with one fourth reader, which I paid Bertrand for last night; also five chocolate drops @ 35c., 1.75; I got them of Carpenter. He will give us 60c. per dozen for ranch eggs delivered here.

Yours, C. A. W."

EXHIBIT C.

Chas. Young, Forsyth, M. T., to Beaupre, Keogh & Co., Dr.

ST. PAUL, *Nov.* 3, 1884.

1882.			To balance.	
June	17.	Mdse., 60 d.		457 56
	21.			37 20
	30.			13 35
July	25.	30		73 19
	"	60		239 95
	27.	30		121 59
	"	60		106 90
Aug.	11.			1 50
	22.			65 07
	"	30		25 69
	31.	60		56 95
Sept.	18.			20 40
Sept.	27.			58 25
	"	30		47 05
213				
Oct.	11.	60		98 88
	"	30		33 49
	26.	C.		215 17
	"	"		306 03
	"	60		111 18
Nov.	3.			13 50
	4.	30		23 15
Dec.	4.	30		40 75
	"	60		17 00
	30.	Int.		12 48

1883.						
Jan.	17.	M.,	60		61 50	
	17.		30		21 60	
Feb.	3.				82 09	
	"		60		60 58	
Feb.	8.		30		37 29	
	23.				61 03	
	"		60		32 80	
March	3.				62 04	
	"				39 60	
	7.		30		97 61	
	10.		60		16 24	
	29.				110 12	
	"		30		62 90	
April	9.		60		16 15	
	9.		30		46 15	
	16.		60		33 35	
	"				9 60	
	17.				10 03	
	23.		30		10 12	
						3,077 08
1882.				Cr.		
June	8.	By cash			100	
July	22.				150	
Aug.	29.				250	
Oct.	7.				250	
Oct.	24.				150	
214						
Nov.	13.				100	
Nov.	23.				100	
Dec.	1.				250	
	29.				125	
1883.						
Jan.	1.				100	
Feb.	5.				25	
	2.				122	
Feb.	19.				50	
March	1.				50	
	23.				100	
April	7.				100	
	9.				55 50	
	20.				100 75	
May	7.				100 12	
	10.				115	
						2,393 37
						683 71

EXHIBIT D.

C. A. Winchester, assignee of Charles Young, Forsyth, M. T., to Beaupre, Keogh & Co., Dr.

ST. PAUL, *Nov.* 3, 1884.

1883.			To balance.	
May	10.	Mdse., 30 d.		32
	10.	60		17 02
	10.	30		125 51
	11.	60		53 78
	16.			14 00
	23.			31 39
	29.			42 28
June	1.	30		29 54
	1.	60		53 38
	4.			22 77
215				
	5.	30		47 43
	5.	60		30 15
	9.	30		33 65
	9.	60		14
	20.			33 36
	20.	30		29 31
	26.	60		19 25
	26.	30		25 37
	28.			32 28
	28.	60		19 40
	29.	30		180 43
July	9.	60		26 20
	10.	30		6 90
	20.	60		37 50
	20.			30
	21.			74 08
	21.	60		45 09
	30.			136 56
Aug.	1.			75 67
	1.	30		38 35
	3.	60		7 04
	7.	30		29 55
	8.	60		32 67
	8.	30		38 25
	14.			34 48
	14.	60		13 60
Sept.	8.	30		77 43
	8.	60		80 03
	8.			36 40
	12.			17 51
	12.	30		52 20
	19.			71 61

1883.					
Sept.	26.			30	
	28.	C. f'rt.		1 70	
Oct.	5.	60		88 20	
	12.	30		76 25	
	12.	60		52 30	
216					
	18.	30		29 32	
	18.	60		11 50	
	24.	30		18 20	
	31.			170 86	
	31.	60		149 76	
Nov.	13.			77 23	
	19.			120 20	
					$2,668 94

1883.		Cr.		
June	8.	By cash	109 50	
	13.		50 00	
July	6.		39 35	
	10.		50 00	
	18.		124 84	
Aug.	6.		45 00	
	6.		136 80	
	6.		108 32	
	20.		32 31	
	23.		166 00	
Sept.	6.		122 06	
	17.		50 00	
	24.		53 75	
Oct.	11.		114 05	
	13.		260 64	
	17.	By mdse.	45 39	
	22.	By cash	4 40	
	31.	By mdse.	58	
Nov.	6.	By cash	111 00	
	12.		113 51	
				1,737 50
				$931 44

Exhibits F1, F2, F3.

Inventory, Dec. 1st, 1883.

13 pr. goggles @ 9	1 17
1 arithmetic	1 00
217 1 fourth reader	75
21 writing books @ 10	2 10
4 histories of the English people @ 1.00	4 00
12 lessons in English @ 75	9 00

8 third readers @ 60		4 80
5 second " @ 40		2 00
4 first " @ 25		1 00
6 primary arithmetics @ 19		1 14
1 mental "		40
7 word books @ 25		1 75
1 picture frame		50
Paper wrappers		25
1 geography		60
2 picture books @ 17		34
4 " " @ 7		28
1 " "		19
2 deer skins, 11 lb, @ 20		2 20
6 cardigan jackets @ 1.50		9 00
3 hanging lamps @ 4.00		12
1 " twine box		50
Carried forward		54 97

The above is the first page of said exhibits, which compose 62 pages of inventory of stock taken in same manner as above, and the total footings thereof are $5,084 66

EXHIBIT I.

Bought of Beaupre, Keogh & Co., St. Paul, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
June 1.	C. A. Winchester, assignee	27 34
" "	Do. do.	53 38
" 4.	C. A. Winchester	22 77
" 5.	Do. assignee	47 43
.218		
June 5.	C. A. Winchester, assignee	30 15
" 9.	Do. do.	14 00
" "	C. A. Winchester	33 65
" 10.	Do. assignee	29 31
" "	Do. do.	33 36
" 26.	Do. do.	25 37
" "	Do. do.	19 25
" 28.	Do. do.	19 40
" "	Do. do.	32 38
" 29.	Do. do.	180 43
July 9.	Do. do.	26 20
" 10.	Do. do.	6 90
" 20.	Do. do.	37 50
" "	Do. do.	30 00
" 21.	Do. do.	45 09
" "	Do. do.	74 08
" 30.	Do. do.	136 56

Date of bill.	To whom billed.	Amount.
1883,		
Aug. 1.	C. A. Winchester, assignee	38 35
" "	Do. do.	75 67
" 3.	Do. do.	7 04
" 7.	Do. do.	27 55
" 8.	Do. do.	32 67
" 8.	Do. do.	38 25
" 14.	Do. do.	13 60
" "	Do. do.	34 48
Sept. 8.	Do. do.	36 40
" "	Do. do.	80 03
" "	Do. do.	77 43
" 12.	Do. do.	52 20
" 12.	Do. do.	17 51
" 19.	Do. do.	71 61
" 26.	Do. do.	30 00
Oct. 5.	C. A. Winchester & Co., assignee	88 20
" 12.	C. A. Winchester, assignee	52 30
" "	Do. do.	76 25
" 25.	Do. do.	18 20
219		
Oct. 17.	C. A. Winchester, assignee	11 50
" "	Do. do.	29 32
" 31.	Do. do.	170 86
" 31.	C. A. Winchester & Co., assignee	149 76
Nov. 13.	Do. do.	77 28
" 17.	Do. do.	120 20

Bought of Wyman, Mullin & Van Dyke, Minneapolis, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
April 18.	Charles Young	56 03
" "	Do.	157 95
Jan. 5.	C. A. Winchester	33 87
" 14.	Charles Young	24 25
" "	Do.	36 33
	(Heading cut off)	67 30
" 19.	C. Young	10 69
" 23.	Do.	21 59
" "	Do.	42 37

Bought of Weaver Lumber Co., Bismarck, D. T.

Date of bill.	To whom billed.	Amount.
1883.		
Nov. 30.	Chas. Young	17 95
Dec. 14.	Do.	13 98

Bought of Clarence M. McLain, St. Paul, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
Oct. 18.	C. A. Winchester, assignee of Chas. Young	27 30

220 Bought of W. E. Savage & Co., Miles City, Montana.

1883.		
May 31.	Charles Young	9 40
June 2.	C. A. Winchester	2 75
" 13.	C. A. Winchester, assignee	1 35
Oct. 17.	C. A. Winchester	90
Nov. 19.	Chas. Young	12 50
Nov. 27.	Do.	14 45

Bought of Noyes Bros. & Cutler, St. Paul, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
	(Heading cut off)	13 21
June 7.	C. A. Winchester, assignee	160 45
" 22.	(Heading cut off)	6 09
" 27.	C. A. Winchester, assignee	41 83
July 21.	Do. do.	46 81
Aug. 11.	Do. do.	96 52
Sept. 7.	Do. do.	23 90
" 24.	Do. do.	34 70
Oct. 9.	Do. do.	36 80
Nov. 1.	Do. do.	13 50
" 12.	Do. do.	65 09.

Bought of Gordon & Ferguson, St. Paul, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
July 7.	C. A. Winchester, assignee	24 38
" 11.	Do. do.	22 92
Sept. 22.	Do. do.	35 25

Bought of Albrecht, Lanpher & Finch, St. Paul, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
Sept. 5.	C. A. Winchester	10 50

221 Bought of Campbell & Burbank, St. Paul, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
Nov. 20.	C. A. Winchester	48 88
Sept. 12.	Do.	21 90
" 26.	Do.	16 50
" "	Do.	12 33
" "	Do.	162 50

Date of bill.	To whom billed.	Amount.
1883.		
Oct. 9.	C. A. Winchester	19 38
" "	Do.	12 00
" "	Do.	21 00
Oct. 10.	Do.	22 75
" "	Do.	4 50
" "	Do.	14 40
Nov. 14.	Do.	10 50
Aug. 17.	Do.	40 00

Bought of D. M. Gilmore Furniture Co., Minneapolis, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
Nov. 26.	C. A. Winchester	2 75

Bought of Woak, Wachswuth & Co., Chicago, Ill.

1883.		
Sept. 25.	C. A. Winchester	65 62
Oct. 10.	Do.	134 95
Nov. 14.	Do.	11 75
Nov. 24.	Do.	7 55

Bought of H. S. Davis, Glendive, Montana.

1883.		
Nov. 10.	Charles Young	1 45

222 Bought of Miles & Strevell, Miles City, Montana.

188–.		
Nov. 26.	Charles Young	3 41
Oct. 9.	C. A. Winchester	1 45

Bought of Moorhead Manufacturing Co., Moorhead, Minn.

1883.		
June 20.	Charles Young	90 00
July 10.	Charles Young	25 50
" 24.	Do.	30 00
Aug. 14.	C. A. Winchester, assignee	30 00

Bought of Bohrer & Hullsick, St. Paul. Minn.

Date of bill.	To whom billed.	Amount.
1883.		
June 18.	C. A. Winchester, assignee of C. Young	56 00
" 28.	Do. do.	17 90
June 20.	Do. do.	15 50
June 17.	Do. do.	34 35
July 10.	Do. do.	16 35
" "	Do. do.	27 25
" 30.	Do. do.	37 50
Aug. 17.	Do. do.	7 50

Date of bill.	To whom billed.	Amount.
1883.		
Aug. 30.	C. A. Winchester	11 00
Sept. 10.	Do.	13 00
" 11.	Do.	4 50
" 20.	Do.	35 00
" 29.	Do.	13 50
Oct. 9.	Do.	17 00
Oct. 20.	Do.	18 00
Oct. 20.	C. A. Winchester, assignee of C. Young	123 00
Nov. 1.	Do. do.	53 70
" 21.	C. A. Winchester	11 34

223 Bought of North Star Boot & Shoe Co., Minneapolis, Minn.

Date of bill.	To whom billed.	Amount.
1883.		
July 3.	C. A. Winchester	67 05
" 19.	Do.	7 20
Nov. 5.	Do.	19 92
" "	Do.	21 00
" "	Do.	76 90
" 26.	Do.	19 62
" "	Do.	13 50

Bought of C. Gotzian & Co., St. Paul, Minn.

1883.		
Aug. 2.	C. A. Winchester	37 25
" 18.	Do.	14 00
" 20.	Do.	25 05
" 28.	Do.	18 90
Sept. 8.	Do.	15 60
" 10.	Do.	13 75
" 22.	Do.	89 30
" 26.	Do.	15 90
Oct. 13.	Do.	6 25
" 10.	Do.	63 30
" 20.	Do.	4 50
" 26.	Do.	27 30
Nov. 8.	Do.	14 82
" 30.	Do.	14 00
June 4.	Do.	3 75
" 19.	Do.	62 40

224 Bought of Marshall, Field & Co., Chicago, Ill.

Date of bill.	To whom billed.	Amount.
1883.		
Sept. 22.	C. A. Winchester	36 12
" 22.	Do.	84 63
Nov. 15.	Do.	61 16
Oct. 10.	Do.	14 75
" 9.	Do.	3 88
Oct. 9.	Do.	46 20

Date of bill.	To whom billed.	Amount.
	Bought of Robert Macaider & Co., Bismarck, Dakota.	
1883.		
July 20.	C. A. Winchester	18 75
	Bought of Walter A. Burleigh, Miles City, Montana.	
1883.		
July 19.	C. A. Winchester	18 40
	Bought of Bismarck Milling Co., Bismarck, Dakota.	
1883.		
Nov. 19.	C. A. Winchester	31 25
	Bought of Allen, Moon & Co., St. Paul.	
Date of bill.	To whom billed.	Amount.
1883.		
Oct. 1.	C. A. Winchester	29 38
" 10.	Do.	15 15
" "	Do.	16 05
" 28.	Do.	6 16
	Bought of C. B. Towers & Co., Miles City, Montana.	
1883.		
July 16.	C. Young	4 00
225	Bought of Mandel Bros., Chicago, Ill.	
1883.		
June 26.	Chas. Young	12 00
" 27.	Do.	40 40
	Bought of Thomas J. Brien, Miles City, Minn.	
1883.		
Oct. 13.	Chas. Young	91 30

EXHIBIT L.

Know all men by these presents that I, Clarence A. Winchester, of Miles City, in the county of Custer and Territory of Montana, as assignee of Charles Young, insolvent, of said county, for and in consideration of a large and proper sum of money to me in hand well and truly paid by Daniel R. Noyes, Chas. P. Noyes, and Edward H. Cutler, partners as Noyes Bros. & Cutler, all of St. Paul, Minnesota, the receipt of which is hereby acknowledged, have sold, bargained, and conveyed, and by these presents do sell, bargain, and convey, unto the said Noyes Bros. & Cutler all and singular the personal property of every nature, description, and kind now belonging to me as such assignee and within said Territory, which property consists — money — other things of the stock in trade in the store building at Forsyth, in said county, lately occupied and used by

said Young as a merchant and afterwards occupied by me as assignee aforesaid, and including not only such of the trust property as was by the certain deeds of assignment of said Young to me, as assignee, conveyed to me and is now in said store or in any way belonging to me, *and* also all other property which I have acquired as such assignee either from and with the proceeds of the sale of any of the trust property aforesaid or otherwise; also all the books
226 and book accounts, notes belonging to me as such assignee, and the money due thereon or to become due; also two (2) horses, one (1) buckboard wagon, all counters, shelving, stoves, chairs, furniture of every kind and description, and all other and singular the personal property now belonging to me as such assignee.

Granting unto the said Noyes Bros. & Cutler, their heirs, executors, administrators, or assigns, the said property and all of the same forever

In testimony whereof I have, at Miles City, in the said county of Custer, on this the 15th day of January, A. D. 1884, hereunto set my hand and affixed my seal.

CLARENCE A. WINCHESTER, [SEAL.]
Assignee of Charles Young.

In presence of—
J. N. GRANGER.
W. C. STAEHLE.

COUNTY OF CUSTER, }
Territory of Montana, } *ss:*

On this 15th day of January, A. D. 1884, before me, a notary public in and for said county and Territory, personally appeared Clarence A. Winchester, as assignee of Charles Young, personally known to me to be the said person described in and who executed the foregoing instrument, and he acknowledged that he executed the same freely and voluntarily as such assignee for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal this the day and year last above written.

WILLIAM C. STAEHLE,
[NOTARIAL SEAL.] *Notary Public.*

TERRITORY OF MONTANA, }
County of Custer. }

I hereby certify that the above and foregoing instrument is a full, true, complete, and correct copy of a certain bill of sale made by Clarence A. Winchester, assignee of Charles Young, to Noyes
227 Bros. & Cutler as it appears upon the records of said county in Book A of Agreements, etc., page 133.

Witness my hand and the seal of the said county this 6th day of January, A. D. 1885.

L. C. DEAN,
[SEAL.] *County Clerk, Recorder.*

Upon said bill of sale is the following endorsement:

TERRITORY OF MONTANA, } ss:
County of Custer, }

I hereby certify that the within instrument was filed for record in this office on the 15th day of January, 1884, at 12 o'clock m., and duly recorded in Book A of Agreements, at pages 133 and 134.

JAMES H. GARLOCK,
County Recorder,
By CHAS. DOUGLASS, *Deputy.*

EXHIBIT M.

In the District Court of the First Judicial District of the Territory of Montana in and for the County of Custer.

BRUNO BEAUPRE *et als.*
vs.
CHARLES YOUNG.

BRUNO BEAUPRE *et als.*
vs.
CHARLES YOUNG and C. A. WINCHESTER.

HERRANN *et als.*
vs.
CHARLES YOUNG.

To the sheriff of the county of Custer, Territory of Montana.

SIR: Please to take notice that Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler, partners as Noyes Bros. & Cutler, all residing at St. Paul, in the State of Minnesota, are the owners of and entitled to the undivided possession of all and singular the personal property heretofore and in the above-entitled action attached and taken possession of and now held by you under and by
228 virtue of or pretended to be so attached and taken possession of under and by virtue of certain writs of attachment issued out of said court in each and all of said cases; also that we are the owners of and entitled to undivided possession of the books and book accounts and notes of Charles Young or C. A. Winchester, assignee, and each and both, and all of the other property in and about the store building recently occupied by said Young and said Winchester, assignee, at Forsyth, in this county, all of which is worth the sum of $6,000, and we hereby demand and require you to at once deliver the same and all of the same to us or our duly authorized agent or attorney, and if you fail so to do, as required by statute and hereby demanded, we shall hold you liable in the premises.

Very respectfully,

DANIEL R. NOYES,
By J. N. GRANGER, *Agent.*
CHARLES P. NOYES,
By J. N. GRANGER, *Agent.*
EDWARD H. CUTLER,
By J. N. GRANGER, *Agent.*
NOYES BROS. & CUTLER,
By J. N. GRANGER, *Agent.*

In the District Court of the 1st Judicial District of the Territory of Montana in and for the County of Custer.

BRUNO BEAUPRE *et al.*
vs.
CHARLES YOUNG.

BRUNO BEAUPRE *et al.*
vs.
CHARLES YOUNG and C. L. WINCHESTER.

HARRANN *et al.*
vs.
CHARLES YOUNG.

COUNTY OF CUSTER,
Territory of Montana, } *ss:*

JAMES N. GRANGER on oath says that he is the agent of Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler, partners as Noyes Bros. & Cutler, of Saint Paul, Minnesota; that his said principals are the owners of and entitled to the undivided possession of all and singular the personal property heretofore attached or
229 attempted to be attached by the sheriff of said county of Custer under and by virtue of certain writs of attachment issued out of said court in the above-entitled action; that they are also the owners of certain books, book accounts and notes, and all other personal property now in or about the store building recently occupied by Charles Young and C. A. Winchester, assignee, at Forsyth, in said county; that the value of all of said property is six thousand dollars.

JAMES N. GRANGER.

Sworn and subscribed to before me this January 15th, 1884.

[NOTARIAL SEAL.]

WILLIAM C. STAEHLE,
Notary Public, Montana Territory.

EXHIBIT Q.

Monthly Statement.

Folios 10, 21, 22.

ST. PAUL, *July* 12, 1884.

Mr. C. A. Winchester, assig. of C. Young, Forsyth, M. T., in account with Noyes Bros. & Cutler, wholesale druggists.

			DR.	CR.
1883.		To balance of account rendered.		
Aug.	1.	Mdse.	96 52	
Sept.	5.	Cash	------	95 05
	7.		23 90	
	17.	Cash	------	25 05
	24.		34 70	

21—160

1883.			Dr.	Cr.
Oct.	9.		36 80	
Nov.	1.		13 50	
	21.	Cash		33 50
	22.		65 09	
Dec.	18.	Cash		35 00
Dec.	13.		40 98	
		Balance		122 89
			311 49	311 49
		Balance	122 89	

230 *Monthly Statement.*

Folios 21, 88.

Mr. C. Young, Forsyth, M. T., in account with Noyes Bros. & Cutler, wholesale druggists.

1882.		To balance of account rendered.	Dr.	Cr.
April	1.	Mdse.	216 89	
May	8.		323 22	
	18.	Cash		150
	25.	"		100
	26.		167 72	
June	23.	Cash		150
	26.			193 86
	30.		23 65	
July	1.		122 75	
	3.		6 55	
	27.	Cash		150
	28.		213 98	
	29.		52 25	
Aug.	11.	Cash		150
	12.		21 83	
	12.		1 89	
	18.		18 37	
	21.		25 26	
	26.		4 66	
	29.	Cash		100
	30.		6 47	
Oct.	13.	Cash		250
	23.		491 57	
	27.		22 50	
Nov.	4.		6 52	
	28.	Cash		100
Dec.	2.		69 93	
	14.	Cash		50
	15.		27 35	

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1883.			Dr.	Cr.
Jan.	15.		5 30	
	16.	Cash		100
	16.		20 50	
Feb.	10.	Cash		75
	12.		49 60	
	12.		4 85	
March	1.	Cash		50
	2.		99 14	
April	7.	Cash		98 86
	18.	Cash		60
	20.	Cash		53 75
	20.		5 00	
	23.		138 50	
May	14.	Cash		100
	15.		13 21	
Aug.	10.			18 65
		Balance		595 06
			2,351 32	2,351 32
		Balance	595 06	

EXHIBIT U.

To Messrs. Bruno Beaupre, Frank Keogh, and John F. Broderick, partners as Beaupre, Keogh & Co., St. Paul, Minn.

SIRS: On or about the 28th day of April, A. D. 1883, Charles Young, of Forsyth, Montana, being then and there the owner of a large stock of general merchandise and other personal property, and being then and there unable to pay his just debts and liabilities, made and executed unto Clarence A. Winchester, of Miles City, Montana, a deed of assignment of all of the same for the benefit of his creditors, which trust said Winchester occupied and has never relinquished.

That said Winchester, as such assignee, and after said assignment and before the 2nd day — January, A. D. 1884, pur-
232 chased certain goods, wares, and merchandise of you and others with the proceeds of said trust property and added the same to and commingled the same with the said trust property.

That afterwards and on or about the 2nd day of January, A. D. 1884, and by virtue of certain writs of attachment issued out of the district court of the first judicial district for the county of Custer, in said Territory of Montana, in two (2) certain actions then pending in said court, in both of which you were plaintiffs and in one of which Chas. Young aforesaid was defendant and in the other of which Chas. Young and Clarence A. Winchester were joint defendants, the sheriff of said Custer county (to whom said writs were

addressed) by your order and direction levied upon and seized and did levy upon and seize and has ever since held and now holds for your benefit and under your order all and singular the said personal property hereinbefore described, which property was then at Forsyth, in said Territory.

That on the 15th day of January, A. D. 1884, we became for value the owners of and entitled to and ever since have been and now are the owners — and entitled to the possession of all and singular the property so attached.

Now, therefore, you will please to take notice that we are the owners of and entitled to the undivided possession of all and singular the personal property so levied upon and seized by said sheriff as aforesaid, which property was on the 15th day of January, A. D. 1884, in the store building at said Forsyth formerly occupied by Charles Young as a general store and afterwards and until the 2nd day of January, A. D. 1884, by Clarence A. Winchester as assignee of said Young, and which consisted, among other things, of books, book accounts, furniture, stoves, counters, shelving, general stock of merchandise, &c., &c.; and we hereby demand and require you to at once turn over and deliver to us or to our agent, Mr. R. E. Stowe, of said Miles City, all and singular the said property, and if you fail
233 so to do we shall hold you liable for the full value thereof, to wit, six thousand dollars, together with damage in the premises.

Very respectfully,

DANIEL R. NOYES.
CHAS. P. NOYES.
EDW. H. CUTLER.
NOYES BROS. & CUTLER.

Dated St. Paul, Minn., January 31, 1884.

EXHIBIT V.

What can you furnish winter apples for by the barrel? I will require about five barrels for use now and up to Christmas, and will probably want ten barrels more. If you have no butter, would you please send us the address of some good creamery where we would be likely to get it?

And oblige,

C. A. WINCHESTER,
Assignee of C. Y.

EXHIBIT X.

In reply to yours, Aug. 31st:

ST. PAUL, MINN., *Sept.* 10, '83.

Mr. C. A. Winchester, assignee Chas. Young, Forsyth, M. T.

DEAR SIR: We know of no one who would take Mr. Young's business at present. If you conclude to sell out at cost we trust you will get the assignee matter paid as rapidly as possible.

Yours truly,

BEAUPRE, KEOGH & CO.

234 EXHIBIT Y.

$20.83. Series of 1880. No. 134,393.

United States Stamps for Special Tax, Internal Revenue, 1883.

Received from C. A. Winchester, assignee, the sum of twenty $\frac{83}{100}$ dollars for special tax on the business of retail liquor dealer to be carried on at Forsyth, *State* of Montana, for the period represented by the coupon or coupons hereto attached.

Dated at Helena, Sept. 21, 1883.

THOMAS P. FULLER,
(*United States Internal Revenue*) *Collector — Dist., State of Montana.*

25 dollars per year.

Severe penalties are imposed for neglect or refusal to place and keep this stamp conspicuously in your establishment or place of business.

Coupon for retail liquor dealer's special tax for April, 1884.
Coupon for retail liquor dealer's special tax for March, 1884.
Coupon for retail liquor dealer's special tax for February, 1884.
Coupon for retail liquor dealer's special tax for January, 1884.
Coupon for retail liquor dealer's special tax for December, 1883.
Coupon for retail liquor dealer's special tax for November, 1883.
Coupon for retail liquor dealer's special tax for October, 1883.
Coupon for retail liquor dealer's special tax for September, 1883.
Coupon for retail liquor dealer's special tax for August, 1883.
Coupon for retail liquor dealer's special tax for July, 1883.

235 EXHIBIT Z.

FORSYTH, M. T., *July 16th,* 1883.

Wyman, Mullin & Van Dyke, Minneapolis, Minn.

MESSRS.: Please send by express one bolt of unbleached sheeting two (2) yards wide.

If you have not received an order from me for some mosquito netting you may put in 6 bolts of it with the sheeting.

If you have those colors you may put in three bolts blue and three green.

I wrote you a card ordering some of the netting last week, but after I had mailed it I made up my mind that I must have directed it to St. Paul instead of to Minneapolis, in which case you would not be likely to get it very soon, if, indeed, you get it at all.

Yours, etc.,

C. A. WINCHESTER,
Assignee of C. Young.

EXHIBIT 1.

FORSYTH, M. T., *Nov. 6th,* 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

MESSRS.: Please find enclosed check for one hundred and thirteen (113) — and fifty-one (51) cents to apply on account.

We had about one hundred dollars freight to pay yesterday on the goods shipped by you and some more we got from Bohrer & Hulsick, so we are not very flush to-day, but will have some more in a few days; will remit just as fast as we can get it.

Yours, etc.,

C. A. WINCHESTER.

236 EXHIBIT 2.

FORSYTH, M. T., *July* 18, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

MESSRS.: Please find enclosed herewith one hundred and sixty-six dollars to apply on assignee account.

I have to report the last batch of hams received from you on bill dated Aug. 1 as being decidedly bad—full of maggots. I cannot stand that. I suppose you intend — send me good goods, and, indeed, they usually are so, but these hams are worthless.

C. A. WINCHESTER.

EXHIBIT 3.

FORSYTH, M. T., *Sept.* 30, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

MESSRS.: I send herewith a small order, which please fill.

Am in hopes as soon as this pay-day (to-morrow we look for the pay-car) is over to make you a good, big remittance.

Mr. Young wishes me to ask you what you would take for your bill against us in cash if paid within the next 30 days.

Yours truly,

C. A. WINCHESTER.

EXHIBIT 4.

FORSYTH, M. T., *July* 11, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

MESSRS.: Will you please ship us 10 sacks and 10 half sacks of the best flour you can get in St. Paul for three ($3) dollars per hundred.

If you cannot get a pretty good article at that price there do not send it.

237 We have been handling the Belle of Moorhead, but as the freight rates from Moorhead are just as high as from St. Paul we thought perhaps we might do better by ordering from you. Use your judgment in the matter, and if you think you can furnish us as good an article as the B. of M. at the same ($3 per 100) or a less figure you may send it on and we will pay for same as soon as we receive it, if you wish us to do so.

Please advise us promptly if you can or cannot fill this order.

Yours, etc.,

C. A. WINCHESTER.

EXHIBIT 5.

FORSYTH, *August* 3.

Beaupre, Keogh & Co.

GENTLEMEN: Please hand this to some good wholesale newspaper company and oblige,

C. A. WINCHESTER.

EXHIBIT 6.

FORSYTH, M. T., *May* 13, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

MESSRS.: Have just received your com. of May 10th and by same mail a letter from Strevell & Garlock, of Miles City, who inform me that you have placed your old account against Charles Young in their hands for collection.

I do not see what you have gained by so doing.

We intend to pay you the old account just as fast as we can possibly do so, and you will now have to pay those lawyers a commission, so that I should think you would rather lose than gain by putting it in their hands.

238 As I understand the matter, you cannot hurry us in this matter any faster than we see fit to be hurried.

I am personally known to Messrs. Strevell & Garlock, as well as most of the business men of Miles City, and especially Mr. T. J. Bryan, of the Miles City lumber yard, in whose employ I was engaged nearly eight months previous to entering Mr. Young's employ, on April 11, 1883.

If you wish to know anything about my character, ability, standing, etc., please refer to the above-named gentlemen or any other business men of Miles who have been there over a year.

Some of the new-comers are not so well acquainted with me.

Shall I make remittances to apply on old account to your attorneys in Miles or directly to you?

Please let me know in regard to this.

Yours most resp., C. A. WINCHESTER, *Assignee.*

EXHIBIT 7.

FORSYTH, M. T., *July 5th*, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

MESSRS.: Enclosed please find fifty (50) dollars to apply on new account.

Cannot say when will be able to make a dividend, but will do so as soon as possible.

Yours, etc., C. A. WINCHESTER.

EXHIBIT 8.

FORSYTH, M. T., *July 28th*, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

239 MESSRS.: Enclosed please find check for one hundred thirty-six (136) dollars and eighty (80) cents; will send more next Monday.

C. A. WINCHESTER.

EXHIBIT 9.

FORSYTH, M. T., *Oct. 31st*, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

MESSRS.: Enclosed please find one hundred and eleven (111) dollars to apply on account, will have some more for you in a few days.

Yours respectfully, C. A. WINCHESTER.

EXHIBIT 10.

FORSYTH, M. T., *July 10th*, 1883.

Beaupre, Keogh & Co., St. Paul, Minn.

Please fill the following order and oblige,

Yours, etc., C. A. WINCHESTER.

50 lbs. good dried peaches.
2 cases red peaches.
2 brls. corn meal.
½ gross Nat. yeast cakes.
1 case gal. syrup.
2½ barls. lard.
6 boxes wood toothpicks.
1 case white cherries, to replace the one for which we were charged and never received.

If you have a price-list of groceries please send it.

EXHIBIT 11.

B., K. & Co., St. Paul, Minn.:

240 The one-half barrel lard you sold me Oct. 12 I sold to the man who runs the railroad section-house here, and to-day he sent for me to come up there. When I got there I was taken down cellar and shown the same identical one-half barrel, which does not contain lard at all, but a miserable combination of tallow, sperm, etc.; perhaps a little lard in it.

The man says he cannot use it and I must take it back. I cannot use it, so I will take it and charge it back to you and hold it subject to your order.

EXHIBIT 11.

Beaupre, Keogh & Co., St. Paul, Minn., to C. A. Winchester, assignee, Cr.

1883.

October 24. ½ barrel lard	156			
	30			
	— 126	9¼	11 65	
			2 25	
				13 90

EXHIBIT AA.

FORSYTH, *May 4th*, 1883.

Bohrer & Hulsick.

GENTLEMEN: Inclosed find check for $817.15 to apply on my account. Please send two barrels eggs to Livingston, also 300 pounds of butter, and every week following one barrel of eggs and 200 pounds of butter; also to Forsyth one barrel of eggs and 100 pounds butter weekly; to Livingston, three cases lemons weekly and one of oranges; to Forsyth, one case oranges and one of lemons weekly. Send to Forsyth one case lemons by express. Try and send us good butter and eggs and fruit. I have made an assignment to
241 C. A. Winchester in favor of my creditors, and hope to be able soon to pay you the balance I owe. Hoping this is satisfactory to you, I remain, yours respectfully,

CHARLES YOUNG.

P. S.—Send us 400 pounds butter to Forsyth, medium quality, and address as before. Send the butter first order.

C. YOUNG.

In the District Court of the First Judicial District of Territory of Montana in and for the County of Custer.

CLARENCE WINCHESTER, as Assignee of the Estate of Charles Young, Plaintiff,
vs.
JOHN W. JOHNSON, BRUNO BEAUPRE, FRANK KEOGH, and JOHN. T. BRODERICK, Defendants.

The plaintiff complains and alleges that on the 3d day of January, 1883, and for a long time prior thereto he was the owner and entitled to and in the possession of the following-described personal goods, property, and chattles, to wit, a stock of merchandise, consisting of drugs, notions, groceries, boots and shoes, dry goods, and clothing, situate and then being in the store formerly occupied as a store by one Charles Young, also three horses and one buckboard, all then and there being in the town of Forsyth and county of Custer, in the Territory of Montana, of the value of four thousand five hundred dollars, as the assignee and trustee of the aforesaid Charles

Young for the benefit of his creditors; that on the said 3d day of January, 1883, the defendants, John W. Johnson, Bruno Beaupre, Frank Keogh, and John Broderick, by and through their agents, deputies, and employees, forcibly and without the consent and against the will of this plaintiff seized, took, and carried away the aforesaid property and ever thereafter excluded this plaintiff from the
242 use, enjoyment, and possession of the same, to his damage and the damage of the creditors of the said Charles Young in the aforesaid sum of four thousand five hundred dollars.

Wherefore the plaintiff demands judgment against the defendants for the sum of four thousand five hundred dollars and interest thereon from the said 3d day of January, 1883, and for costs.

ANDREW T. BURLEIGH,
Plaintiff's Attorney.

TERRITORY OF MONTANA, }
County of Custer. }

ANDREW T. BURLEIGH, being duly sworn, says that he is the attorney of the plaintiff herein and makes this affidavit because the plaintiff is absent from said county of Custer, where his said attorney resides; that he has heard read the foregoing complaint, knows the contents thereof, and that the same is true according to the best of his knowledge, information, and belief.

ANDREW T. BURLEIGH.

Subscribed and sworn to before me this 10th day of February, 1885.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By LESLIE SULGRAVE,
Deputy Clerk.

TERRITORY OF MONTANA, }
County of Custer, } *ss:*

I, Theo. Muffly, clerk of the first judicial district in and for said county and Territory, do hereby certify the foregoing transcript is a full, true, and complete copy of the original complaint now on file in my office.

In witness whereof I hereunto set my hand and seal this 10th day of June, A. D. 1885.

[District Court Seal.]

THEO. MUFFLY, *Clerk*,
By —— ——, *Deputy Clerk.*

243 STATE OF MINNESOTA, }
County of Ramsey. }

In District Court.

DANIEL R. NOYES *et als.* }
vs.
BRUNO BAUPRE *et als.* }

Please take notice that the testimony and depositions of Thomas

Alexander, Charles W. Anderson, George Taylor, and Samuel Bosworth will be taken at the store of Thomas Alexander, at Forsyth, in the Territory of Montana, to be introduced in evidence in the above-entitled action at the trial thereof on part of the defendants therein.

That the taking of such testimony and depositions will be commenced at said place at 9 o'clock in the forenoon, on or within one hour next thereafter, on the 8th day of June, A. D. 1885, by and before some officer authorized then and there to administer an oath; that the taking of said depositions will be adjourned from day to day until the examination of said witnesses *are* completed. You are requested to appear then and there and cross-examine said witnesses.

WARNER & STEVENS,
Now WARNER, STEVENS & LAWRENCE,
Attorneys for Defendants.

To James N. Granger, Esq., attorney for plaintiffs.

Due personal service of the above notice admitted at St. Paul, Minn., this 22d day of May, A. D. 1885.

JAMES. N. GRANGER,
Plaintiffs' Attorney.

STATE OF MINNESOTA, *County of Ramsey,* } ss:

In District Court.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK.

244 Testimony of Thomas Alexander, in the county of Custer and Territory of Montana, taken before W. H. Ross, a notary public, by virtue of the notice hereto attached, as stated in the return thereto.

First Interrogatory. What is your name, age, residence, and occupation?

A. Thomas Alexander; age, twenty-eight years; residence, Forsyth, county of Custer, Territory of Montana; occupation, that of a dealer in general merchandise.

Second Interrogatory. Do you know the parties to this action?

A. Not personally; have done business with both firms by correspondence for something over two years.

Third Interrogatory. Do you know Charles Young and Clarence A. Winchester; if so, how long?

A. Have known Charles Young about three years and Clarence A. Winchester about two and a half years.

Fourth Interrogatory. Where was Charles Young residing during the year 1882?

A. In the spring of 1883 he resided at the Rosebud, Custer county,

Montana. Afterward he came here to Forsyth and resided here the the rest of the year.

Fifth Interrogatory. In what business was Charles Young engaged in during the year 1883?

A. During the first part of the year he was engaged in a general merchandise business at Forsyth, Montana.

Q. Do you know what he was doing the rest of the year?

A. I left Forsyth some time in the latter part of the year.

Sixth Interrogatory. You may state the general character of his business.

A. He was a retail dealer in dry goods, notions, hats and caps, boots and shoes, drugs, and groceries and provisions.

Seventh Interrogatory. How long have you been engaged in the general merchandise business?

245 A. Between six and seven years.

Eighth Interrogatory. State, if you know, what became of the stock of merchandise owned and held by Charles Young.

A. It was taken under attachment by the sheriff of Custer county before the first of February, 1884, and was held by him until the latter part of December, 1884. It was then sold on execution to one Butler (W. H.), who claimed to represent Beaupre, Keogh & Co., for $600.

Ninth Interrogatory. Were you present at the execution sale of which you speak?

A. I was.

Tenth Interrogatory. State when that sale was.

A. To the best of my recollection, on December 24th, 1884.

Eleventh Interrogatory. What was the value of that stock of merchandise at the time of the sale by the sheriff?

A. About $1,500, to the best of my knowledge, in the condition it was in.

Twelfth Interrogatory. Do you know anything of the value of that stock of general merchandise previous to May, 1883?

A. Not that I could swear to; had looked at the stock somewhat in February, 1883, and considered it worth about $2,000 at that time.

Thirteenth Interrogatory. State what became of that stock after its sale by the sheriff to W. H. Butler in December, 1884.

A. I bought it, including all fixtures in the store, one horse, one mare, and one colt, December 26, 1884, for the sum of $1,100.

Fourteenth Interrogatory. From your knowledge of the value of goods as a merchant, what was the full value of that stock of merchandise when in good condition?

246 A. At the time that I bought it it was worth, in good condition, about $2,000.

Fifteenth Interrogatory. In what condition was that stock when in Young's possession and afterward? State fully.

Question objected to by plaintiffs on the ground of irrelevancy, incompetency, and immateriality.

A. Some of the stock was in poor condition; it was old, and pretty

well worn by moving up and down the railroad. To the best of my knowledge only a small part of it was in that condition.

1st cross-interrogatory. Have you ever been in the drug business?

A. Have never been a druggist, but have sold drugs.

2nd cross-interrogatory. How long have you been in the drug business?

A. I have sold drugs for about two years—patent medicines and such things.

Third cross-interrogatory. How long was this stock of goods held under attachment by the sheriff?

A. To the best of my knowledge, about ten months.

Fourth cross-interrogatory. At what time did you first examine this stock of goods after the attachment with a view of purchasing?

A. Some time in November, 1884.

Fifth cross-interrogatory. How long was this before the execution sale?

A. To the best of my knowledge, about six weeks.

Sixth cross-interrogatory. Can you state whether or not at the time of the sale any of the goods were missing out of the stock which you saw there when you made the examination with a view of purchasing?

Defendants object on the ground that it is incompetent and irrelevant.

A. Did not notice anything missing at the time of the sheriff's sale.

Seventh cross-interrogatory. Did you examine the goods
247 carefully at the time of the sheriff's sale to ascertain if they were all there at the time when you examined them with the view of making a purchase?

A. I did not.

Eighth cross-interrogatory. At the time you purchased the goods of Butler were they all there that you saw when you examined them with the view of making a purchase?

A. They were not; there were several articles, crockery and overshoes and some little things, which were sold to other parties at the sheriff's sale.

Ninth cross-interrogatory. Were there any other articles missing than those which you have named out of the stock from the time you examined them with a view to purchase to the time you bought the goods?

A. I noticed one blue flannel shirt and a bottle of patent medicine.

Tenth cross-interrogatory. What was the effect produced upon that stock of goods by holding them here under attachment for ten months?

A. To the best of my judgment it was damaged from four to five hundred dollars.

Eleventh cross-interrogatory. State whether or not a portion of the stock had not become almost utterly worthless in consequence

of holding them so long by the sheriff; and if so, state what goods they were.

A. There had, to the best of my judgment; some drugs, some boots and shoes were mouse-eaten until they were spoiled, some clothing and a few hats, some bacon and lard, some dried fruits, some meal.

Twelfth cross-interrogatory. Do you know whether or not Mr. Young had added to his stock of merchandise after you and Mr. Lyman examined it with a view of purchasing and before it was attached by the sheriff; and, if so, to what amount?

248 A. From the appearance of the stock in the summer of 1883 he had, I should judge, to the amount of one thousand dollars.

Thirteenth cross-interrogatory. Did Mr. Butler sell to you all of the goods which he bought at the sheriff's sale?

A. He did.

Fourteenth cross-interrogatory. During the time this stock was held under attachment, had not goods generally depreciated in value? If so, to what extent?

A. They had; about four hundred dollars.

First redirect interrogatory. About what was the value of the goods you speak of as having been spoiled and become utterly worthless by reason of being held by the sheriff?

A. About three hundred dollars.

Second redirect interrogatory. Were goods being sold out of this stock in the summer of 1883?

A. Yes, sir.

Recross interrogatory. Were not purchases made and goods added to the stock during the same period?

A. There was.

THOS. ALEXANDER.

Subscribed and sworn to before me this 8th day of June, 1885.

[NOTARIAL SEAL.] W. H. ROSS,
Notary Public.

Testimony of George H. Taylor, in the county of Custer and Territory of Montana, taken before W. H. Ross, a notary public, by virtue of the notice hereto attached, as stated in the return thereto.

First Interrogatory. What is your name, age, residence, and occupation?

A. George H. Taylor; age, thirty years; residence at Forsyth, in the county of Custer and Territory of Montana; am by occupation a merchant.

249 Second Interrogatory. How long have you resided at Forsyth?

A. Since April, 1882.

Third Interrogatory. What has been your business as a merchant, and how long have you been engaged as such?

A. Have been a retail dealer in general merchandise at Forsyth for two years.

Fourth Interrogatory. Do you know either of the parties to this action, and for how long?

A. Have known Beaupre, Keogh & Co., through correspondence, since 1881; am not personally acquainted with either of the the parties.

Fifth Interrogatory. Do you know Charles Young and Clarence A. Winchester? If so, how long have you known them?

A. I do; have known Winchester about four years and Young about three years.

Sixth Interrogatory. State, if you know, in what business Charles Young has been engaged at Forsyth, and for how long.

A. Charles Young came here in the spring of 1882 and started a general merchandise business. He was engaged in that business until the fall of 1883 or the summer of that year.

Seventh Interrogatory. Do you know what became of the stock of goods with which he was doing business here at Forsyth? If so, state fully all you know concerning the same.

A. I do. I think about the first of January, 1884, his stock of goods was seized by the sheriff of Custer county. The stock remained in the sheriff's custody for about eleven months. It was then sold at sheriff's sale to Mr. Butler.

Eighth Interrogatory. Who was in charge and possession of that stock of goods at the time you say it was seized by the sheriff of Custer county?

250 A. Charles Young was in there doing the business. All I know about it is that he was in there selling the goods.

Ninth Interrogatory. Where was Clarence A. Winchester at the time of the seizure of this stock of merchandise by the sheriff?

A. He had been absent from Forsyth about a month.

Tenth Interrogatory. Who had been in charge of the store and stock of merchandise during that time?

A. Charles Young.

11th Interrogatory. What, so far as you know, had Charles Young been doing with this stock of merchandise?

Objected to by plaintiff as incompetent and irrelevant.

A. He was in the store there, and the store was opened up. He looked like a man who was selling goods; cannot say that he sold any.

12th Interrogatory. Who else, if any one, was in possession of that store at that time and doing business there?

A. Did not see any one else in charge of it at that time.

13th Interrogatory. Are you acquainted with the value of that kind of goods of which that stock was composed in your business as a merchant?

A. Yes.

14th Interrogatory. Were you acquainted with that stock of goods and merchandise at the time of its seizure by the sheriff?

A. I was acquainted with all of the stock, except the drugs.

15th Interrogatory. What was the value of that stock at the time of its seizure by the sheriff?

Objected to on the ground that it has not been shown that witness knows what goods were there.

A. As near as I can say, it was worth from $2,000 to $2,500. This is as near as I can guess; that's my opinion.

251 1st Cross-interrogatory. Do you know of Mr. Young's having made any assignment to Mr. Winchester for the benefit of creditors?

A. Yes; I know of his making an assignment.

Objected to by defendants as incompetent.

2nd Cross-interrogatory. State, as near as you can recollect, when the assignment was made.

A. In the spring of 1883.

3d Cross-interrogatory. Did you see a published notice of that assignment?

Objected to by defendants as incompetent, irrelevant, and immaterial.

A. To the best of my knowledge, I did.

4th Cross-interrogatory. Did Mr. Winchester at that time assume to take charge of the store as assignee.

A. I think he did.

5th Cross-interrogatory. Did he go in there about that time and take charge of the business?

A. He did.

6th Cross-interrogatory. Was not Mr. Winchester in and about the store most of the time from the date of the assignment until its seizure by the sheriff?

A. He was there from the date of the assignment until November or the 1st of December, 1883; I will not be positive as to the date.

7th Cross-interrogatory. Did you assist in taking an inventory of this stock of goods at the time of the assignment, or at any other time; if so, when?

A. I assisted in taking an inventory of that stock at the time Mr. Butler sold to Mr. Alexander.

8th Cross-interrogatory. What did the goods inventory at that time?

A. I did not see the inventory footed up.

9th Cross-interrogatory. Do you know what the goods inventoried at the date of the attachment?

A. No.

10th Cross-interrogatory. Or at the date of the assignment?

252 A. No.

11th Cross-interrogatory. Upon what basis do you fix the value of the goods at the time of the attachment?

A. Upon the basis that goods here were bought and sold at.

12th — Interrogatory. Do you know the market purchase price of all the goods which were seized at that time?

A. I do not.

13th — Interrogatory. From the time that stock of goods was seized until they were sold by the sheriff was there a falling off of the value of goods of this character; and, if so, to what extent?

A. I should judge that there was a decrease of from one-half to one per cent.

14th Cross-interrogatory. What would you judge the difference in the purchase price of that stock of goods to be between the time they were seized by the sheriff and the time they were sold on execution?

A. I should judge that stock of goods decreased in value between five hundred dollars and six hundred.

16th Cross-interrogatory. State whether many of those goods were spoiled or nearly so during the time they were held by the sheriff under execution; and, if so, what that damage would amount to, in your judgment.

A. Some of the stuff was spoiled, and I should judge that the stock of goods was damaged, generally, $500.00 or $600.00.

G. H. TAYLOR.

Subscribed and sworn to before me this 8th day of June, 1885.

[Notarial Seal, Montana.]

W. H. ROSS,
Notary Public.

Testimony of Charles W. Anderson, in the county of Custer and Territory of Montana, taken before W. H. Ross, a notary public, by virtue of the notice hereunto attached, as stated in the return thereto.

253 1st Interrogatory. What is your full name, age, place of residence, and occupation:

A. Charles W. Anderson; age, 36 years; Forsyth, county of Custer, Territory of Montana; by occupation, a butcher.

3d Interrogatory. Do you know the parties to this action?

A. Only by reputation.

4th Interrogatory. Do you know Charles Young and Clarence A. Winchester, and how long?

A. Have known both for about three years.

5th Interrogatory. State, if you know, in what business Charles Young was in the early part of 1883.

A. A retail dealer in general merchandise.

6th Interrogatory. Where was that business carried on by him and what was its character?

A. At Forsyth. He had a stock of general merchandise and notions.

7th Interrogatory. How long had he carried on the business, to your own knowledge?

A. Since July, 1882.

8th Interrogatory. What do you know, if anything, of Charles Young having that stock of merchandise in his possession and

doing business at Forsyth as a merchant from and after the spring of 1883?

A. I know that at the time the place was closed by the sheriff Charles Young was running it, and had been for some time before that; probably two months. It was closed by the sheriff the latter part of 1883 or the beginning of 1884.

9th Interrogatory. State, if you know, where Clarence A. Winchester was at the time of which you speak.

A. At Miles City, M. T., and had been away from Forsyth a month or probably more.

10th Interrogatory. State, if you know, who was in charge
254 and possession of the stock and merchandise of which you speak during the time you say that Winchester was absent from Forsyth.

A. Charles Young. He was carrying on business and selling goods there.

11th Interrogatory. State what afterwards became of the stock.

A. He sold some of it. It was then seized by the sheriff of Custer county, M. T., and afterward sold by him in December, 1884—I think the 24th.

12th Interrogatory. Who had charge of this stock for the sheriff during the time that he held it?

A. E. I. Becker had charge of it for a month or six weeks, and I had charge of it about nine months or nine months and a half.

13th Interrogatory. In what manner was the stock cared for during that time?

A. It was overhauled and dusted twice. It was kept in the building occupied by Young before that. Fire was kept up to prevent goods from freezing. It was well taken care of.

1st cross-interrogatory. Do you recollect the time when Young made the assignment of those goods to Winchester?

A. I do not.

2nd cross-interrogatory. Do you know whether at any time during the year 1883 Clarence A. Winchester had charge of the stock of goods in question as the assignee of Charles Young?

A. I know that during a part of the year of 1883 Winchester had charge of the store and had goods marked to himself. As to the assignment I don't know anything about it.

3rd cross-interrogatory. Do you know whether the goods received by Clarence A. Winchester were marked to him individually or to him as assignee?

A. They were marked C. A. Winchester.

4th cross-interrogatory. Do you know whether Charles Young, during the year 1883, while working in the store at
255 Forsyth, was employed by Mr. Winchester as clerk or whether he was working on his own account?

A. I do not know.

5th cross-interrogatory. Do you know whether during the time you state Mr. Young was in possession of the store he was holding that possession as the employee of Mr. Winchester as assignee or otherwise?

A. I don't know.

CHAS. W. ANDERSON.

Subscribed and sworn to before me this 8th day of June, 1885.

[Notarial Seal, Montana.]

W. H. ROSS,
Notary Public.

TERRITORY OF MONTANA, } ss:
County of Custer, }

Be it known that I took the annexed deposition of Thomas Alexander, George H. Taylor, and Charles W. Anderson pursuant to the annexed notice.

That I was then and there a notary public in and for said county; that I exercised the power of that office in taking such deposition; that by virtue thereof I was then and there authorized to administer an oath; that each witness before testifying was duly sworn to testify the whole truth and nothing but the truth relative to the cause specified in the annexed notice; that the testimony of each witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the plaintiff by Walter A. Burleigh, Sr.

That the examination was conducted on the part of the defendant by James H. Garlock.

Witness my hand and seal this 8th day of June, 1885.

[Notarial Seal, Montana.]

W. H. ROSS,
Notary Public.

256 STATE OF MINNESOTA, }
County of Ramsey. }

In District Court.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER }
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK. }

Testimony of Frank Conley in the county of Custer and Territory of Montana, taken before W. H. Ross, a notary public, by virtue of the notice hereto attached, as stated in the return thereto.

1st Interrogatory. What is your name, age, occupation, and place of business?

A. Frank Conley; age, 21 years; am a deputy sheriff; reside at Miles City, Custer county, Territory of Montana.

2d Interrogatory. Do you know the parties to this action?

A. Am not personally acquainted with any of them.

3d Interrogatory. How long have you resided in said Miles City?

A. Three and one-half years.

4th Interrogatory. In what business or occupation were you engaged during the month of January, 1884?

A. Was a deputy sheriff under John W. Johnson, who was at that time sheriff of the said county of Custer.

5th Interrogatory. Do you know Charles Young and Clarence A. Winchester; and, if so, how long?

A. Have known Charles Young about two years; have known Clarence A. Winchester about one and one-half years.

6th Interrogatory. Do you know of the action brought in the district court of the first judicial district of the Territory of Montana in and for the county of Custer, wherein Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., were the plaintiffs and Charles Young the defendant?

A. Yes.

257 7th Interrogatory. Do you know when that action was commenced? If so, when?

A. On or about the second day of January, 1884.

8th Interrogatory. Do you know of an action commenced in the same court wherein the same parties were plaintiffs and Charles Young and Clarence A. Winchester the defendants?

A. I do.

9th Interrogatory. You may state, if you know, if any writs of attachment were issued in these cases or either of them and delivered to the sheriff or you as his deputy.

A. Writs of attachment were issued in each of said cases and delivered to me as the deputy of the sheriff of said county for service.

10th Interrogatory. Do you know of a stock of goods and merchandise and other property which was at or about that time in the possession of Charles Young? If so, state where the said stock of merchandise was and of what it consisted.

A. I do. It was situated at Forsyth, Custer county, Territory of Montana, and consisted of a general stock of merchandise, comprising dry goods, clothing, boots and shoes, and other merchandise.

11th Interrogatory. You may state what you did as deputy of the sheriff of said Custer county upon the delivery to you of the said two writs of attachment.

A. I went to Forsyth, in the said county of Custer, and made levy upon the said stock of merchandise, also upon one buckboard and one horse, about January 2d, 1884.

12th Interrogatory. You may state, if you know, who was in possession of the property upon which you levied at that time.

A. I do. Charles Young was in possession of the same.

13th Interrogatory. State what you did upon making this levy and what conversation, if any, you had with any person in possession of the property at the time of making the levy.

258 A. I went into the store then occupied by Charles Young, at Forsyth, in Custer county and Territory of Montana. I found Charles Young there; asked him who owned the store. He said that he did. I then said, "If you own this I'll take possession of it." I then took possession under the said writs of attachment.

14th Interrogatory. You may state if you served the summons in said action at that time upon the defendants.

A. I served the summons in each action upon Charles Young, at

Forsyth, at that time. I afterwards served the summons in the second action upon Clarence A. Winchester, at Miles City, M. T., one or two days after.

15th Interrogatory. State, if you know, where Clarence A. Winchester was at the time you made the attachment.

A. I think he was at Miles City. I know he was not at Forsyth.

16th Interrogatory. Did you attach any other property than that you have mentioned under the said writs of attachment?

A. I did not. I did not attach any notes, books of account, or choses in action.

17th Interrogatory. Upon making the attachment what did you do with the stock of goods and merchandise and other property?

A. I took possession and put a man in charge of the same. I afterwards went there and took an inventory.

18th Interrogatory. Do you knew where the books of account of the said Charles Young were at the time you made the attachment?

A. I do not.

FRANK CONLEY.

Subscribed and sworn to before me this 5th day of June, 1885.

W. H. ROSS,
Notary Public.

[NOTARIAL SEAL.]

259 In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

SIG. HANAUER and JOSEPH HANAUER, Plaintiffs,
against
CHARLES YOUNG, Defendant.

Writ of Attachment.

The people of the Territory of Montana to the sheriff of the county of Custer, Greeting:

Whereas the above-entitled action was commenced in the district court of the first judicial district of the Territory of Montana in and for the said county of Custer by the plaintiff in the said action to recover from the defendant, Charles Young, in the said action the sum of three hundred and thirty-one dollars ($331), lawful money of the United States, besides interest, at the rate of ten per cent. per annum, from the second day of April, A. D. 1883, and costs of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you, the said sheriff, that you attach and safely keep all the property of said defendant, Charles Young, within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand as above mentioned, unless the said defendant give you security by an undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is

about to be attached, in which case you will take such un-
260 dertaking, and hereof make due and legal service and return.

Witness Hon. —— ——, judge of the said district court of the first judicial district, this second day of January, A. D. 1884.

Attest my hand and the seal of said court the day and year last above written.

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

[SEAL.]

Filed February 9, 1884.

EXHIBIT "A."

SHERIFF'S OFFICE, CUSTER COUNTY, MONTANA.

I, the sheriff of said county, do hereby certify that on the 3d day of January, 1884, I levied upon and attached the following-described real estate as the property of Charles Young, to wit, lot No. eighteen (18), in block sixty (60), in the town of Forsyth, said county, together with all the buildings and improvements thereon, by filing with the county clerk and recorder of said county a copy of the annexed writ of attachment, to which said copy of writ of attachment the following notice was attached, to wit:

Know all men by these presents, that by virtue of a writ of attachment, of which said writ the annexed is a true copy, I have this day levied upon and attached and do hereby attach all of the right, title, and interest of Charles Young in and to the following real estate, to wit: Lot No. eighteen (18), in block No. sixty (60), in the town of Forsyth, county of Custer, and Territory of Montana, together with all of the buildings and improvements situated on said lot.

Dated Miles City, M. T., this February 8th, 1884.

J. W. JOHNSON, *Sheriff.*

261 And by delivering a true copy of said writ of attachment to C. A. Winchester, to which said copy the above-mentioned notice was annexed.

And I do further certify that on said 3d day of January, 1884, I delivered a true copy of said annexed writ of attachment to C. A. Winchester, to which last said copy a notice of garnishee was attached addressed to said C. A. Winchester, in answer to which said garnishee said C. A. Winchester says that he has no moneys, goods, chattels, or effects in his possession or under his control belonging to said Charles Young.

And I further certify that on said 3d day of January, 1884, at the town of Forsyth, in said county, I levied upon and attached the following-described personal property, to wit:

TERRITORY OF MONTANA, } *ss:*
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial dis-

trict of Montana Territory, do hereby certify that the foregoing transcripts are a full, true, and complete copy of the original writ of attachment and copy of account as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

EXHIBIT "A."

1 oil tank.
40 gals. oil.
16 lb. Arbuckle's coffee.
25 lb. bar soap.
1 coffee mill.
1 5-lb. pail lard.
8 cans salmon.
1 can salmon.
262 2 cans peaches.
3 " gooseberries.
5 cans peaches.
5 cans blackberries.
5 cans blueberries.
2 " strawberries.
10 " asparagus.
2 " apple butter.
4 " " "
60 lbs. coffee.
4 cans 2-lb. squash.
2 " 2-lb. pumpkin.
4 " 3-lb. beans.
4 " 2-lb. green gauge plums.
1 " 2-lb. apricots.
21 lb. Cal. pears.
2 lb. whortleberries.
38 cans spices.
8 2-lb. bots. catsup.
2 bots. H. radish.
2 lb. rice.
4 lb. beeswax.
1½ lb. W. castile soap.
7 bots mustard.
2 " table sauce.
15 " " pickles @ 25c.
1 bot. sweet pickles, 65.
2 tin dippers.
2 lantern globes.
3 wash dishes.
19 tin plates.
2 tin pots.

12 lamp chimneys.
2 cake stands.
1 lantern globe.
6 soup bowls.
3 scollop dishes.
263 2 lb. cinnamon.
10 lbs. Graham flour.
19 lb. sweet corn.
5 lb. crackers (soda).
24 lamp burners.
4 2-lb. cans tomatoes.
6 3-lb. cans B. B. beans.
11 cans lobsters.
52 lb. W. beans.
1 lb. cardamom seed.
5 lb. butter.
19 lb. prunes.
19 lb. D. apples.
10 lb. S. cakes.
16 pkgs. hops (4 lbs.).
19 pkgs. dry hop yeast.
15 5-in. plates.
14 lb. G. powder tea @ 52c.
6 lb. black tea @ 35c.
10 lb. sweet crackers.
4 cans B. kraut @ 42c.
3 cans lunch tongue.
7 doz. tin spoons.
5 2-lb. roast chicken.
2 large tin spoons.
10 2-lb cans C. beef.
4 cans fresh peas @ 23c.
10 lb. dry raspberries.
14 cans lima beans.
9 jars raspberry jam.
7 cans B. powder.
4 2-lb. cans S. berries.
2 1-qu. cans M. syrup.
13 lb. mustard, in cans.
7 2-lb. cans preserved cranberries.
4 2-lb. cans red current jelly.
1 2-lb. can apple jelly.
264 1 lb. red pepper, at 29c.
7 lb. B. soda.
2 lbs. ginger.
4 metallic H. brushes.
1 box fish berries.
1 lb. soap bark.
75 cans sardines.
1 nursing bottle.
½ lb. golden rod root.

17 1-lb. pkgs. starch.
2 bottles bluing.
1½ sal Rochelle.
3 sauce dishes.
5 tumblers.
1 glass sugar-bowl.
1 glass milk pitcher.
1 glass salt cellar.
10 7-in. plates.
5 7-in. plates.
10 7-in. sauce dishes.
11 plates.
17 8-in. plates.
1 glass butter dish.
4 platters.
1 mouse trap.
1 tin plate.
2 milk jars.
1 student-lamp chimney.
1 lamp shade.
3 glass lamp shades.
16 1-lb. boxes honey.
250 Crystal Cave cigars.
100 horseshoe cigars.
4 shoe brushes.
1 clothes brush.
11 hair brushes.
15 4-oz. plugs Navy clp. tob.
265 1 whetstone.
1 brass faucet.
6⅓ doz. cubeb cigarettes.
23 pkgs. V. F. cigarettes.
16 lbs. Cloth of Gold chew. tob.
260 lb. gran. sugar.
28 lbs. oatmeal.
½ lb. white-oak bark.
6 bot. (2-oz.) extract.
2½ lb. carpenter chalk.
8 2-oz. box vanilla extract.
1 lb. chocolate.
4 oz. essence strawberry.
4 boxes matches.
9 lamp chimney cleaners.
100 Punch cigars.
2 wisp brooms.
1 railroad lantern.
1 bracket lamp.
1 5-lb. can apples.
14 lb. Climax tobacco.
50 cigars.
19 lbs. Army — Navy tobacco.

4½ lbs. smoking tobacco.
18 1-lb. cans Price baking powder.
8¼ — Government fine-cut tobacco.
107 4-oz. packages Durham smoking tobacco.
½ lb. licorice root.
4 lbs. whole allspice.
1 lb. snuff.
2¾ — shells.
2 lbs. ginger.
1 lb. fine senna.
4 lbs. cream tartar.
6 oz. copperas.
14 oz. oxalic acid.
2 lbs. wild cherry.
266 ¾ lb. borax.
5 lb. dental plaster.
10 oz. prussiate potash.
15 " camomile flax.
18 " Burgundy pitch.
3¼ glue.
6 oz. orange peel.
2 lb. P. capsicum.
2 lb. 14 oz. sal nitre.
7 oz. Dutch moder.
¼ lb. senna.
1 lb. camomile.
1 lb. 3-oz. clover.
5 oz. pumice stone.
1¾ lb. caraway seed.
¾ lb. lamp black.
¾ lb. clover—1 lb. sagewood chips.
4¾ lb. alum.
1 lb. orange peel.
¾ lb. Irish moss.
5 oz. walnut bark.
1¼ lb. whiting.
1 gal. Hennessey brandy.
4 rubber rattles.
1 box rubber bands (½ gross).
5 doz. lead pencils.
½ " carpenter lead pencils.
½ lb. bluing.
75 common pen-holders.
½ doz. packages bird seed.
2 doz. lamp wicks.
1 " linen washers.
1 breast pump.
150 fish hooks.
9 lb. Ven. red.
2 lb. lemon peel.
1 lb. senna.

267 1 lb. orange peel.
22 cans pine tar.
6 lb. putty.
1 open box sundry drugs.
16 lb. sweet crackers.
34 lb. oatmeal.
½ gal. port wine.
1 gal. sweet oil.
1 qt. cert. varnish.
3 lb. salt of tartar.
10 lb. B. powder.
9 1-lb. cans paint.
½ gal. benzine.
5 razor hones.
1½ doz. spectacle cases.
4 scissors.
2 razor straps.
1 doz. boxes blacking.
3 ball lags.
1 box French blacking.
10 bottles iron bitters.
1 steel, 2 tin pans.
1¾ lb. cookies.
2 lb. sage.
37½ W. lead.
25 red lead.
1 gal. nectar oil.
2 doz. bottles cough balsam.
1 ball twine.
½ doz. lot Spalding glue.
1 box fishing tackle.
3 2-ft. rules.
2 1-ft. rules.
16 fish lines.
3 lb. billiard chalk.
1 tobacco-cutter.
1 lb. snuff.
268 34 boxes worm lozenges.
1 doz. belladonna plasters.
3 lots British oil.
8 porous plasters.
5 bottles Hamburg drops.
11 " Stratenva. "
9 bottles mucilage.
7 bottles ink.
34 bottles St. Jacob's oil.
8 gross school crayon.
2 bottles Hostetter's bitters.
4 lb. Castile soap.
½ doz. balls thread.
½ doz. balls druggist twine.

½ doz. bottles aniline liniment.
5 bottles tolu rock and rye.
½ doz. bottles Ayer's pectoral.
13 bottles Kennedy's medical discovery.
2 bottles Warner's S. K. & L. cure.
½ doz. pain killers.
1 lb. green sulphur.
8 rubber balls.
8 bars C. B. soap.
1 gal. turpentine.
34 lbs. butter.
8 gals. alcohol.
1 gal. Eldorado oil.
1 lb. wrapping paper.
1 pint beef, iron, and wine.
3 qts. maple syrup.
1 pt. glycerine.
3 qts. essence peppermint.
1 book, U. S. Dispensary.
4 lbs. salts.
½ gal. spirits of nitre.
1 gal. sour wine.
½ doz. Green's History of England.
269 1 doz. Self-Lessons in English.
5 Primary Arithmetics.
1 looking glass (4 x 6 ins.).
35 stereoscopic views.
5 children's picture books.
1 dish Rio prunes.
1 doz. pipe stems.
3 alarm clocks (N. P.).
7 pipes.
5 papers Cig. tobacco.
35 cigars (Punch).
3 doz. needles.
4 boxes ladies' paint.
2 doz. pocket combs.
1 scarf-pin and ear-rings.
16 pkgs. cigarettes.
1 pkg. court plaster.
1 wooden clock.
9 thimbles.
1 doz. R. B. soap.
8 time locks.
3 ax handles.
6 slates.
8 tooth brushes.
7 pocket knives.
3 copy books.
7 lbs. Brazil nuts.
1 ledger.

4 time books.
10 lbs. pecans.
8 paint brushes.
9 small looking-glasses.
1½ doz. India memorandum.
1 Life James-Younger Bros.
¼ doz. Swinton's Word Books.
¼ doz. Second Readers.
1 qt. can honey drops.
270 1 stereoscope.
3 small dolls.
50 Mun. Jav. cigars.
1 lot watch keys.
1 ring case.
1 nipple bottle.
1 doz. silver forks.
1 base ball.
1 doz. fine combs.
3 large pocket books.
3 razors.
1 field cup.
2 hand looking-glasses.
4 pocket inkstands.
½ doz. Phi. indelible inks.
2 packs playing cards.
14 violin strings.
8 tooth brushes.
7 pocket knives.
5 shaving brushes.
6 mouth organs.
3 small pocket diaries.
12 key rings.
6 crochet hooks.
4 round rubber combs.
1 Slopton razor.
2 watch chains.
10 indelible pencils.
15 rubber combs.
8 fine combs.
1 morocco album.
8 napkin rings.
1 metallic hair brush.
6 autograph albums.
5 violin keys.
5 hair combs.
10 violin strings.
1½ — jew's-harps.
271 1½ doz. combs.
2 looking-glasses.
32 bunches of lace, in case.
1 nickel-plate show case, 2 feet 6 in.

1 nickel-plate show case, 4 feet 6 in.
1 walnut show case, 4 feet 6 in.
1 pair shears.
3 ladies' linen collars.
3 gents' linen collars.
20 yards green ribbon.
10 yards blue ribbon.
1 wire hair brush.
½ dozen silver-plated tea spoons.
1 doz. spectacles.
2 violins.
12 combs.
1 ladies' syringe.
½ quire writing paper.
1½ doz. pk. court-plaster.
10 yds. white silk tape.
5 yards red ribbon.
8 yards brown silk ribbon.
10 yards brown silk tape.
8 yards brown silk ribbon.
8 yards brown silk tape.
1 silk sash.
10 yards gray ribbon.
8 yards brown silk tape.
10 yards black silk ribbon.
1 fan.
10 gross white elastic.
10 gross black elastic.
5 shawl pins.
10 yards green tape.
1 pr. white baby shoes.
3 pr. ladies' bks. kid shoes.
½ doz. white linen hdkfs.
10 yards black lace.
272 ½ doz. ladies' white handkerchiefs.
1 doz. lace necklaces.
30 yds. silk lace.
1 doz. ladies' lace collars.
4 silk handkerchiefs.
36 yards embroidery.
24 oz. zephyr.
10 yds. silk tape.
10 " red silk ribbon.
1 pr. wristlets.
1 white necklace.
2 ladies' scarfs.
1 box corset clasps.
1 gross hair pins.
4 " pins.
6 doz. safety pins.
1 gross E. Q. lace strings.

12 sleeve-holders.
8 gross hooks and eyes.
7 doz spools silk twist.
76 bunches tape.
45 spools but.-hole twist.
35 bunches braid.
4 doz. drug books.
1 doz. pr. ladies' gloves.
5 pr. balbriggan hose.
14 pr. ladies' cotton hose.
1 pr. lisle-thread hose.
5 " kid gloves.
20 pr. baby stockings.
25 yds. webbing.
128 spools cot. thread.
1 lot dress buttons.
10 pr. fancy cot. hose.
1 ladies' hood.
14 pr. children's mittens.
273 1 doz. pr. cotton gloves.
1 " cotton hose.
8 doz. dress buttons.
30 yds. ladies' white emb.
12 yds. white lace.
289 spools cotton thread.
9 prs. children's cot. hose.
17 pr. misses' fancy hose.
20 " " wool "
4 ladies' undershirts.
2 pr. " wool pants.
14 pr. children's wool hose.
6 " ladies' assort'd cass. hose.
30 " " cott. "
½ doz. pr. misses' wool hose.
4 pr. " " "
6 pr. ladies' " "
13½ oz. sponge.
400 44 Colt's cartridges.
400 44 S. W. "
250 45 Colt's.
400 44 Colt's.
350 41 "
240 44 S. W. cartridges.
10 ladies' gauze shirts.
468 Spencer cartridges.
4 ladies' white ruffles.
4 " black "
220 45-75 cartridges.
250 44 W. "
125 50-70 needle gun.
4 pr. ladies' lisle gloves.

100 45-75 W. cartridges.
2 pr. kid gloves.
3 " white ladies' corsets.
16 yards white lace.
4 bunches I. Crofer's trimming.
274 2 yards black veiling.
11 ladies' silk lace collars.
40 yards cot. flannel.
25 yards ticking.
2 bolts jeans cloth.
1 bolt ducking.
3 parasols.
18 yards prints.
48 yards imp. black alpaca.
19 yards merino finish.
6 pair baby shoes.
25 yards prints.
12 yards prints.
1 table-cloth.
12 yards prints.
1 piece black dress goods.
1 bolt slate-colored goods
42 yards ladies' dress goods.
4 bolts ladies' dress goods.
84 yards ladies' dress goods.
5 ladies' hoods.
1 ladies' scarf.
11 pks. ladies' white linen emb.
1 ladies' scarf.
6 pieces light calico.
14 pieces prints calico.
4 pieces gingham.
1 piece shirting.
1 bolt silicia.
3 silk bows.
3 pieces shirting.
2 pieces tarlatan.
5 pieces cambric.
4½ yards satinette.
1 red cotton handkerchief.
1½ bolt wigging.
17 pair suspenders.
275 6 pair gents' suspenders.
5 cotton undershirts.
1 pair cotton drawers.
6 pair cotton undershirts.
2 pair woolen drawers.
1 undershirt.
5 pair red flannel drawers.
17 white shirts.
17 calico shirts.

30 boxes paper collars.
2 bundles yarn.
4 boxes paper collars.
8 winter caps.
6 fur caps.
20 pair wool mits.
3 dozen cotton socks.
14 cloth caps.
1 dozen boys' wool socks.
5 Scotch caps.
13 pair cotton socks.
17 pair cotton socks.
11 ladies' belts.
12 pair woolen socks.
3 pair German socks.
3 hats.
6 gent's scarf neckties.
2 pairs boys' button shoes.
7 neckties.
10 hats.
3 bolts Atlantic muslin.
3 bolts Lonsdale sheeting.
10 yards cambric.
5 " sheeting.
6 " blue cloth.
2 pieces red flannel.
1 " gray "
1 piece check flannel.
276 1 piece oil-cloth.
1 pair mits.
11 beaver undershirts.
8 pair beaver drawers.
1 cot. undershirt.
2 pair fine boots.
6 blouses.
2 canvas coats.
18 pairs Arctic overshoes.
2 " rubber overshoes.
1 " fine boots.
13 " men's calf boots.
4 " gent's shoes.
2 " boys' boots.
2 " ladies' boots and shoes.
8 " ladies' slippers.
2 " ladies' kid side-lace shoes.
7 " ladies' slippers.
3 " " shoes.
2 " " ties.
1 " rubbers.
4 " gent's slippers.
7 " chidren's shoes.

2 pairs ladies' shoes.
9 " boys' boots.
5 red flannel undershirts.
5 gray " "
6 cot. " "
4 pairs gray drawers.
4 cot. flannel drawers.
5 " undershirts.
1 pair drawers.
12 wool overshirts.
4 lb. cot. batting.
15 pairs overalls.
12 men's hats.
5 boys' hats.
277 4 men's hats.
13 gingham overshirts.
6 pairs men's shoes.
1 blue blouse.
5 pairs ladies' slippers.
13 Cant. flannel undershirts.
19 pairs ladies' shoes.
7 " boys' boots.
7 " gent's slippers.
8 " ladies' shoes.
1 bundle blotting paper.
5 pairs men's rubbers.
5 " kid shoes.
4 " misses' shoes.
5 " boots.
7 " gent's boots.
14 " children's shoes.
16 " children's shoes.
1 " gent's slippers.
23 " insoles.
1 bundle shoestrings.
1 pr. boys' boots.
1 " gent's slippers.
12 " " carpet slippers.
8 " men's boots.
6 " ladies' shoes.
2 Mackinaw shirts.
1 overshirt.
20 pr. jeans pants.
2 looking-glasses (2 x 18 in.).
5 pr. flan. drawers (B. K. K.).
2 pr. silk drawers.
5 lb. gunpowder.
4 undershirts (F. D.).
11 " "
3 woolen U. shirts (B. O. E.).
1 pr. woolen drawers (B. O. E.).

278 3 pr. buckskin gloves (O. K.).
7 " children's wool socks.
6 pr. buck. gloves (B. D. E.).
5 " " " (S. K.).
6 " dog-skin gloves (C. M. T.).
7 " buck. gloves (C. B. T.).
4 gray U. shirts.
5 pr. dog-skin mits (B. K. E.).
4 pr. men's shoes.
10 " " calf boots.
2 ladies' hoops.
4 pr. men's boots (C. B. K.), @ 3.15.
2 suits canvas clothes (O. A. E.).
5 pieces balmoral skirting.
4 canvas coats, 6 canvas vests.
11 boxes brass rivets.
1 Mackinaw overskirt.
5 knit jackets.
12 yds. yarn.
1 pr. ladies' kid slippers.
2 large wisp brooms.
9 gross button fasteners.
4 pr. woolen blankets (A. C. E.).
8 pieces mosquito netting.
7 pieces Rentshire lawn.
3 palm-leaf fans.
38 boxes gun caps.
5 ladies' straw hats.
½ doz. pr. wool mits.
2 white shirts.
6 leather knife holsters.
1 hanging lamp.
1 bag shoemakers' wax.
50 lbs. bar lead.
9 awls.
1 bunch wax ends.
600 44 S. & W. cartridges.
279 500 38 Sharp cartridges.
600 32 S. & W. "
150 44 " "
1 pr. ladies' kid slippers.
5 " gray drawers.
1 " baby but. shoes.
2 Turkish towels.
13 pr. leather mits.
2 zinc collar straps.
7 blk. silk caps.
17 linen towels (H. O.).
12 men's cloth caps (B. B. E.).
1 doz. pr. woolen socks.
1 pr. woolen stockings.

1 box. large envelopes.
1 bot. iron bitters.
6 leather pocket books.
16 bot. vaseline.
8 boxes camphor ice.
9 boxes arnica salve.
7 bars rdy. bog. soap.
11 bars cen. soap.
8 bars L. S. "
7 pieces Y. S. "
12 bars G. "
4 bots. Lubin's perfume.
1 doz. bars C. salve.
8 1-oz. bots. Hoyt's Ger. cologne.
6 2-oz. " " " "
7 boxes Brown's brochi. troches.
4 pkgs. Indian ointment.
8 " carbolic salve.
14 " mercurial ointment.
50 38 rifle cartridges.
500 38 S. W. "
150 38 revolver "
50 38 S. W. "
150 38 Colt's cartridges.
280 7 boxes fancy writing paper.
300 newspaper wrappers.
4 boxes W. envelopes.
2½ bundles writing paper (R. ½).
25 pkg. Young's condition powders.
120 sheets legal cap.
1 ream bill cap.
112 labeled lots drugs.
4 bottles indelible ink.
5 " Mag. balm at 31c.
3 corkscrews.
1 pair shears.
1 cork-presser.
2 boxes kidney wort.
1 bottle cuticura.
1 " scattering liniment.
4 bottles hop bitters.
4 " magnesia.
3 " Reed's G. E. tonic.
5 " Hostetter's bitters.
5 " anodyne liniment.
5 bottles sarsaparilla.
2 bottles asthma liniment.
3 " cod liver oil.
1 " essence P. apple.
3 " Kennedy's med. discovery.
3 " Congress water.

3 pkgs. tacks.
8 bottles magnetic ointment.
2 bottles German ointment.
2 accordeons @ $3.50 each.
10 boxes salve.
5 boxes dyes.
1 checker-board.
1 mortar and pestle.
3 bottles Centaur liniment.
3 bottles gargling oil.
281 4 bottles Ayre's ague cure.
1 bottle Dermador.
10 bottles Green's August flower.
4 " Jayne's liniment.
2 " veg. cough balsam.
1 " May.
2 " Jayne's pectoral.
5 bottles Brown's panacea liniment.
5 bottles German syrup.
2 " Castoria liniment.
8 " carboline.
11 " Allen's balsam.
½ doz. Ayer's pectoral.
3 bottles Florida water.
6 " essence Jamaica ginger.
5 " hair vigor.
3 " buchu.
½ doz. (large) pain killer.
3 bottles infants' food @ 30c.
19 " pain killer.
3 " strawberry syrup.
2 " Linham's veg. compound.
4 " injection bon.
2 " Warner's S. K. and L. cure.
4 " hypophosphites.
10 " St. Jacob's oil.
4 " spavin cure.
1 " inflammatory liniment.
1 druggists' scales.
1 44 S. & W. revolver.
1 bottle beaver oil.
½ lb. spruce gum.
1 bottle cologne.
2 " O. liniment.
1 atomizer.
6 oz. ext. of licorice.
8 oz. ext. of C. seed.
282 6 oz. fluids stillingia.
1 atomizer.
1 bottle ext. of sarsaparilla.
2 doz. oil of anise.

2 paper files.
1 rule.
3 papers bronze.
1 cork puller.
3 6-8 oz. strychnine.
3 oz. logwood.
6 " bears' oil.
3 " valerian.
4 " goose oil.
8 " tincture hyoscianna.
4 " oil organum.
8 bots. paregoric.
4 bots. Winslow's soothing syrup.
4 bots. Jayne's vermifuge.
1 pint gin.
5 pkgs. ess. of cubebs.
6 oz. oil of cedar.
5 bots. tooth powder.
7 pkgs. peppermint.
1 pkge. charcoal.
1 bot. glycerine.
1 " honey.
½ oz. oil of rose.
1½ oz. of pul. cudbear.
1 oz. ground anise seed.
2 boxes face powder.
2 oz. chloral hydrate.
1 bot. gonorrhœa medicine.
1 " scratch remedy.
1 " peppermint.
1 " dye.
2½ oz. sulphate quinine.
2 oz. calomel.
283 1 oz. cosmetic.
4 bots. shoe blacking.
1 lot seeds.
3 bots. neat's-foot oil.
1 bot. red precipita.
1 " tincture cubebs.
2 oz. pineapple.
3 " oil of hemlock.
8 " zinenbus.
12 " buchules.
6⅓ " bots. morphine.
6 " chilae.
2 " camphor.
1 quadrant.
40 phys. ebs.
3 pr. woollen blankets.
1 " pants, $1.90.
1 " " 1.45.

3 pr. pants, @ 1.45.
1 " " 1.45.
1 " " 1.45.
2 " " 1.45.
2 " " 1.45.
4 " " 90.
1 " " 90.
4 " " 90.
1 coat @ 8.00.
1 " " 1.25.
1 pr. pants, 1.25.
2 " " @ 2.55.
1 " " 5.00.
1 " " 1.25.
1 " " 2.00.
1 " " 90.
1 " " 1.45.
1 " " 1.90.
1 pr. pants, $2.00.
284 1 pr. pants, 1.45.
1 " " 2.00.
1 pr. pants, $1.25.
1 suit clothes, $12.00.
1 coat, $6.00.
1 pants, $5.00.
2 suits clothes @ $8.50.
1 " " @ 7.25.
1 " " @ 7.25.
1 " " @ 7.25.
1 pants and vest @ $8.60.
1 coat @ $5.00.
1 suit of clothes @ $9.25.
1 " " 10.25.
1 " " 12.00.
1 " " 10.40.
2 pants and 2 vests @ $9.25.
1 suit of clothes, $15.00.
1 boy's suit, $3.95.
1 " " 2.95.
1 " " 3.50.
1 " " 3.50.
" " " 7.50.
1 boy's suit, $7.50.
1 boy's suit, 7.50.
1 pr. pants, $2.00.
1 vest, $2.00.
1 overcoat, $3.20.
100 lbs. green coffee.
1 pkge. oakum.
11 cans cove oysters.
2 deer hides.

7 scrub brushes.
25 lbs. ½-inch rope.
1 nickel watch @ $7.50.
20 lbs. smok. tobacco.
29 7-in. plates.
285 3 tin teapots.
40 8-in. plates.
4 cov'd dishes.
24 5-in. plates.
7 5-in. scollop dishes.
1 glass sugar bowl.
1 glass butter dish.
1 glass spoon holder.
1 glass milk pitcher.
40 8-in. plates.
1 lamp shade.
1 washbowl and pitcher.
2 sugar bowls, 2 doz. cups.
1 doz. cups, 52 saucers.
2 doz. straw hats.
7 pairs ladies' kid button shoes.
2 pairs ladies' lace shoes.
1 pair ladies' but. shoes.
3 pairs plow shoes.
50 lbs. currants.
4 pair cowhide boots.
25 lbs. peanuts, 100 lbs. prunes.
⅓ barrel pickles.
100 lbs. beans.
4 cans preserved cranberries.
9 oil cans.
9 lanterns.
1 tin teapot.
7 cans strawberries.
100 lbs. oat meal.
20 2-lb. cans string beans.
50 lbs. ½-in rope.
9 2-lb. cans gooseberries.
400 lbs. oats.
40 boxes soda crackers.
4 2-lb. can raspberries.
⅔ bbl. mackerel.
286 3 cans R. chicken.
30 lbs. barley.
1 box macaroni.
½ case candles.
8 cans whortleberries.
½ case hops.
2 washboards.
1 doz. 3-lb. cans tomatoes.
2 " " " B. berries.

½ bbl. vinegar.
30 lbs. rice.
1 sk. sacks.
12 3-lb. can green gauges.
30 gals. molasses.
¾ bbl. fish.
1 case beans.
16 cans B. trout.
1 can blk. berries.
3 broken cases bottles.
1 cheese stand.
1 garden rake.
2 brooms.
1 cad. climax tob. (100 lbs.).
4 boxes axle grease.
1 3-lb. can squash.
1 bushel sweet corn.
17 2-lb. cans salmon.
2 " " lobsters.
5 ". " tomatoes.
2 boxes fine crackers.
1 heating stove.
1 gray horse, valued at $150.
1 buckboard, valued at $65.
1 200-lb. counter scales.
1 tea scales.
1 hanging lamp.
5 cases eggs, 150 doz.
287 100 lbs. Arbuckle's coffee.
24 " " "
300 lbs. lard.
6 cans apple butter.
6 bbls. apples.
1 " soda crackers.
50 lbs. dry apples.
16 goblets, 1,500 cigars, C. case, and horseshoe.
7 boxes spices.
6 bots. bluing.
1 case raspb.
1 " peas.
¾ " lobsters.
1 " Babbitt's lye.
½ " lye.
1 bbl. pork.
1 case pt. flasks.
100 lbs. lard.
5 cases tomatoes.
⅔ cad. tea.
15 gals. vinegar.
½ bbl. sk. salt.
½ " brown sugar.

16 cans currant jelly.
½ bbl. kraut.
20 cans raspberries.
13 qt.-cans M. syrup.
14 cans mackerel.
1 case honey.
1 case raspb.
4 cases 2-lb cans corn.
1 " salmon.
1 " strawberries.
1 " raspb.
50 lbs. pork.
2 sks. bacon (300 lbs.).
2 washtubs.
288 5 gals. arnica.
5 " spirits turpentine.
5 gals. boiled oil.
2 " oil of tar.
15 bushels potatoes.
21 sks. oats.
6 washboards.
1 cad. 24-lb. plug tobacco.
20 lbs. smok. tob.
40 " sulphur.
40 " resin.
1 case new soap.
1 " bl'kberries.
3 " string beans.

And I have all of the said personal property now in my possession.

J. W. JOHNSON, *Sheriff.*

Dated Miles City, M. T., this February 8th, 1884.

Fees:

Service	1 00
Copy	50c.
Filing copy	50c.
Return	50c.
Mil	40c.
Copy with garnishee	50c.
	$3 40

TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court, First Judicial District.

SIG. HANAUER *et al.* }
vs.
CHARLES YOUNG. }

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the annexed
289 is a full, true, and correct copy of the writ of attachment and return of sheriff of said writ entered in the above-entitled action.

In witness whereof I have this day set my hand and seal of the above-named court this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Yellowstone, }

I, John Coburn, associate justice of the Territory of Montana and judge of the first judicial district thereof, in which district is embraced and included the county of Custer, in said Territory, do hereby certify that Theo. Muffly is the duly appointed and qualified clerk of the district court of the first judicial district of said Territory, acting as such, and that Leslie Sulgrove is the duly appointed and qualified deputy clerk of said district court in and for the county of Custer, acting as such; and I do further certify that the attestation and certificates of said clerk by the said deputy clerk to each and every of the papers, records, and judicial proceedings hereto appended are in due form and are correct.

Dated this eleventh day of June, A. D. 1885.

JOHN COBURN, *Judge.*

TERRITORY OF MONTANA, } ss:
County of Custer, }

In the First Judicial District Court in and for said County.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG, Defendant.

290 The above-named plaintiffs, for a cause of action against the above-named defendant, complain and allege—

That said plaintiffs at the time hereinafter mentioned were copartners and doing business as merchants at St. Paul, in the State of Minnesota, under the firm name of Beaupre, Keogh & Co.; that

the said defendant is indebted to the said plaintiffs in the sum of six hundred and eighty-three and $\frac{71}{100}$ dollars for the balance of an account for goods, wares, and merchandise sold and delivered by said plaintiffs to said defendant at his request on divers days and times between the 1st day of June, 1882, and the 25th day of April, 1883.

That the whole amount and aggregate value of the items of said account charged to said defendant is the sum of three thousand and seventy-seven and $\frac{8}{100}$ dollars, no part of which has been paid, except the sum of twenty-three hundred ninety-three and $\frac{37}{100}$ dollars, leaving the balance of said account, in the sum of $683.71, still unpaid.

That the said defendant has not paid the said last-mentioned sum or any part thereof.

Wherefore plaintiffs demand judgment for the sum of 683.71 dollars, with interest thereon from the 25th day of April, 1883, at the rate of ten per cent. per annum, and for costs.

STREVELL & GARLOCK,
Attorneys for Plaintiffs.

TERRITORY OF MONTANA, } ss:
County of Custer, }

JAMES H. GARLOCK, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs named in the foregoing complaint; that he has heard the same read and knows the contents thereof, and that the facts stated therein are true to his, said deponent's, best knowledge, information, and belief.

And deponent says further that the reason why this affi-
291 davit of verification is not made by said plaintiffs or either of them in person is that all of said plaintiffs are absent from the said county of Custer, where resides this deponent, their attorney.

JAMES H. GARLOCK.

Subscribed and sworn to before me this 2d day of January, 1884.

THEO. MUFFLY,
Clerk First Judicial District Court,
By CHAS. DOUGLASS,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of the Territory of Montana, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original complaint in the cause of Beaupre, Keogh and Company against Charles Young, as appearing on file and of record in my office.

In witness whereof I have this day set my hand and the seal of the above-named court this 10th day of June, A. D. 1885.

THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

In the District Court of the First Judicial District of the Territory of Montana in and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Co-partners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG, Defendant.

Undertaking on Attachment.

292 Whereas the above-named plaintiffs have commenced or are about to commence an action in the district court of the first judicial district of the Territory of Montana in and for the county of Custer against the above-named defendant upon a contract for the direct payment of money, claiming that there is due to the said plaintiffs from the said defendant the sum of six hundred and eighty-three dollars and ninety-one cents, lawful money of the United States, besides interest, and are about to apply for an attachment against the property of the said defendant as security for the satisfaction of any judgment that may be recovered therein:

Now, therefore, we, the undersigned, residents of the county of Custer, in consideration of the premises and of the issuing of the said attachment, do jointly and severally undertake, in the sum of fourteen hundred and sixty dollars, and promise to the effect that if the said defendant recover judgment or if the court shall finally decide that the plaintiffs were not entitled to an attachment in said action the said plaintiffs will pay all costs that may be awarded to the said defendant and all damages which he may sustain by reason of the wrongful issuing out of the attachment, not exceeding the sum of fourteen hundred and sixty dollars.

Witness our hands and seals this 2d day of January, 1884.

A. W. SLEEPER. [SEAL.]
JOHN CARTER. [SEAL.]

TERRITORY OF MONTANA, } ss:
County of Custer, }

A. W. SLEEPER and JOHN CARTER, whose names are subscribed as the sureties to the above undertaking, being severally duly sworn, each for himself says that he is worth the sum in the said undertaking specified as the penalty thereof over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

A. W. SLEEPER.
JOHN CARTER.

293 Subscribed and sworn to before me this 2d day of January, A. D. 1884.

THEO. MUFFLY, *Clerk,*
By CHAS. DOUGLASS,
Deputy Clerk.

Filed January 2, 1884.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original undertaking on attachment as appearing on file and of record in my office in Miles City.

In witness whereof I have this day set my hand and seal of the above-named court this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court in the First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG, Defendant.

TERRITORY OF MONTANA, } ss:
County of Custer, }

JAMES H. GARLOCK, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs in the above-entitled action; that the defendant in said action is indebted to the said plaintiffs in the sum of six hundred eighty-three and $\frac{71}{100}$ dollars, besides interest thereon at the legal rate from the 25th day of April,
294 1883, upon both express and implied contracts for the payment of money, to wit, the balance of an account for goods and merchandise sold and delivered by said plaintiffs to said defendant at his request between the first day of June, 1882, and April 25th, 1883; that the said sum is now due from defendant to said plaintiffs, and that the payment of the same is not secured by any mortgage, lien, or pledge upon either real or personal property.

JAMES H. GARLOCK.

Subscribed and sworn to before me this 2nd day of January, 1884.

[SEAL.] THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original affidavit for attachment as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

Filed January 2nd, 1884.

In the District Court of the First Judicial District of the Territory of Montana in and for the County of Custer.

BRUNO BEAUPRE *et al.*
vs.
CHARLES YOUNG.

295 *Demurrer.*

Now comes the defendant and demurs to the complaint herein and for ground of demurrer says—

That the said complaint does not state facts sufficient to constitute a cause of action.

Dated June 7th, 1884.

WALTER A. BURLEIGH,
ANDREW F. BURLEIGH,
Defendant's Attorneys.

TERRITORY OF MONTANA, } *ss:*
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original demurrer as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court this 10th day of June, A. D. 1885.

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

[SEAL.]

Filed January 7th, 1884.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN B. BRODERICK,
Plaintiffs,
against
CHARLES YOUNG, Defendant.

Action brought in the district court of the first judicial district of the Territory of Montana in and for the county of Custer, and the complaint filed in said county of Custer, in the office of the clerk of said district court.

296 The people of the Territory of Montana send greeting to Charles Young, defendant:

You are hereby required to appear in an action brought against

you by the above-named plaintiffs in the district court of the first judicial district of the Territory of Montana in and for the said county of Custer, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county—or if served out of this county but in this district, then within twenty days; otherwise, within forty days—or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to recover the sum of six hundred and eighty-three and $\frac{70}{100}$ dollars on account for goods sold and delivered by plaintiffs to defendant, at his request, between the 1st day of June, 1882, and the 25th day of April, 1883, with interest from the 25th day of April at the rate of ten per cent. per annum, and for costs, as will more fully appear by reference to the complaint on file herein.

And you are hereby notified that if you fail to appear and answer the said complaint as above required the said plaintiffs will take a default against you and apply to the court for the relief demanded in their complaint.

Given under my hand and the seal of the district court of the first judicial district, of the Territory of Montana in and for the said county of Custer this second day of January, in the year of our Lord one thousand eight hundred and eighty-four.

THEO. MUFFLY, *Clerk.*
CHAS. DOUGLAS,
Deputy Clerk.

A true copy.
Attest:

THEO. MUFFLY, *Clerk.*
LESLIE SULGROVE,
Deputy Clerk.

OFFICE OF THE SHERIFF OF THE COUNTY OF CUSTER.

297 I hereby certify that I received the within summons on the second day of January, A. D. 1884, and personally served the same on the 3rd day of January, A. D. 1884, on Charles Young, at Forsyth, in the county of Custer, M. T., he being the defendant named in said summons, by delivering to and leaving with him, said defendant, personally, in the county of Custer, a copy of said summons.

Dated this 8th day of February, A. D. 1884.

J. W. JOHNSON, *Sheriff.*

Service	75
Copy	50
Return	50
Mileage	40
	$2 15

Filed February 9th, 1884.

THEO. MUFFLY, *Clerk.*
CHAS. DOUGLAS,
Deputy Clerk.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Plaintiffs,
against
CHARLES YOUNG, Defendant.

Writ of Attachment.

The people of the Territory of Montana to the sheriff of the county of Custer, Greeting:

298 Whereas the above-entitled action was commenced in the district court of the first judicial district of the Territory of Montana in and for the said county of Custer by the plaintiff in the said action to recover from the defendant, Charles Young, in the said action the sum of six hundred and eighty-three and ninety-one one-hundredths dollars ($683.91), lawful money of the United States, besides interest, at the rate of ten per cent. per annum, from the 25th day of April, A. D. 1883, and costs of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you, the said sheriff, that you attach and safely keep all the property of said defendant, Charles Young, within your said county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand, as above mentioned, unless the said defendant give you security by an undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and hereof make due and legal service and return.

Witness Hon. —— ——, judge of the said district court of the first judicial district, this second day of January, A. D. 1884.

Attest my hand and the seal of the said court the day and year last above written.

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

[SEAL.]

Filed February 9, 1884.

SHERIFF'S OFFICE, CUSTER COUNTY, MONTANA.

I do hereby — that, by virtue of the annexed writ of attachment, on the 3rd day of January, 1884, I levied upon and
299 attached certain real and personal property as the property of Charles Young, a full list of which said property is attached to and made a part of the sheriff's returns to a certain writ of attachment issued out of the district court of the first judicial district of the Territory of Montana in and for the county of Custer, in which said action Sig. Hanauer and Joseph Hanauer are the plaintiffs and Charles Young is the defendant, and which said list and sheriff's return is

marked Exhibit "A;" all of which said property was attached at the time and in the manner as described in the said Exhibit "A."

Dated Miles City, M. T., this February 8th, 1884.

J. W. JOHNSON, *Sheriff.*

Fees:

Service	1 00
Copy	50
Return	50
Service with garn.	50
Filing copy	50
Writ	40
	$3 40

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original writ of attachment as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court this 10th day of June, A. D. 1884.

[SEAL.]

THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

300 In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Partners as Beaupre, Keogh & Co., Plaintiffs,
against
CHARLES YOUNG, Defendant.

Memorandum of Costs and Disbursements.

Disbursements.

Sheriff's fees	$4 50
Clerk's fees	10 00
Sheriff's mileage	10 00
Care and guarding property	118 75
Insurance	109 00
Inventory	17 70
	$270 00

TERRITORY OF MONTANA, } ss:
County of Custer, }

JAMES H. GARLOCK, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs in the above-entitled action, and as such is better informed relative to the above costs and dis-

bursements than the said plaintiffs; that, to the best of his knowledge and belief, the items in the above memorandum contained are correct, and that the said disbursements have been necessarily incurred in the said action.

JAMES H. GARLOCK.

Subscribed and sworn to before me this 12th day of May, A. D. 1884.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

301 A true copy.
Attest:

THEO. MUFFLEY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

COUNTY OF CUSTER:

In the District Court of the First Judicial District, County of Custer, Territory of Montana.

BEAUPRE, KEOGH & Co., Plaintiffs,
vs.
CHARLES YOUNG, Defendant.

Certifiate to Judgment-Roll.

I, the undersigned, clerk of the district court of the county of Custer, Territory of Montana, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action and in Judgment Book No. A of said court, at pages 211, 212; and I further certify that the foregoing papers, hereto annexed, constitute the judgment-roll in said action.

Witness my hand and the seal of said court this 10th day of May, 1884.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

Filed May 10th, 1884.
A true copy.

THEO. MUFFLY, *Clerk.*
LESLIE SULGRAVE,
Deputy Clerk.

302 BRUNO BEAUPRE *et al.*
vs.
CHARLES YOUNG.

The above-entitled cause having come on regularly for hearing upon the issue of law arising upon the complaint of the plaintiffs and the demurrer of the defendant thereto, and the said demurrer having been overruled on the 18th day of April, 1884, by the court,

and no answer having been filed in said action, the court finds that said plaintiffs are entitled to recover judgment in said action according to the prayer of said complaint.

It is therefore ordered that judgment be entered against said defendants and in favor of plaintiffs for the sum of $754.92 and costs of suit, taxed at $270, which judgment is rendered accordingly, and is entered at page 211 of Judgment Book.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk 1st district court in and for said county, do hereby certify that the foregoing transcript is a full, true, correct, and complete copy of the record of the above-mentioned cause as shown in the record of court proceedings, page 500, Book A, now in this office.

In witness whereof I have this 10th day of January, 1885, set my hand and seal of said court.

[SEAL.]

THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court, First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG, Defendant.

303 At a regular term of said court begun and holden at Miles City, the county-seat of said county, on the 14th day of April, 1884.

Present: Hon. John Coburn, judge.

The above-entitled action having come regularly for hearing upon the issue of law arising upon the complaint of the plaintiffs and the demurrer of the defendant thereto on the 18th day of April, 1884, and said demurrer having been overruled by the court, and said defendant not having asked or obtained leave to answer said complaint, and no answer having been filed in said action, the said action having come on for hearing before the court on the 10th day of May, 1884, the said court finds that said plaintiffs are entitled to recover judgment in said action according to the prayer of said complaint, and orders that judgment be entered in accordance therewith.

Whereupon, by reason of the law and the finding aforesaid, it is ordered and adjudged that the plaintiffs, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., do have and recover of and from the said defendant, Charles Young, the sum of seven hundred fifty-four and $\frac{92}{100}$ dollars, with

interest thereon, at the rate of ten per centum per annum, from the date hereof until paid, together with the costs and disbursements of said plaintiffs incurred in said action, amounting to the sum of two hundred and seventy dollars, and that the said plaintiffs have execution therefor, with accruing costs.

Judgment rendered 10th of May, 1884.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original judgment as entered in Judgment Record A, on pages 211, 212, as appears of record in my office.

304 In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

[SEAL.]

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

The people of the Territory of Montana to the sheriff of the said county of Custer, Greeting:

Whereas on the tenth day of May, A. D. 1884, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., recovered a judgment in the said district court of the first judicial district of the Territory of Montana in and for the county of Custer against Charles Young for the sum of seven hundred fifty-four and $\frac{93}{100}$ dollars damages, with interest thereon at the rate of ten per cent. per annum till paid, together with costs and disbursements at the date of said judgment and accruing costs, amounting to the sum of two hundred and seventy dollars, as appears to us of record;

And whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, in said county of Custer, and the said judgment was docketed in said clerk's office, in the said county, on the day and year first above written;

And the sum of $754.93. with interest thereon at the rate of ten per cent. per annum, and plaintiffs' costs, amounting to the sum of $270, and accruing costs, is now (at the date of this writ) actually due on said judgment:

Now, you, the sheriff, are hereby required to make the said
305 sums due on the said judgment for damages, with interest as aforesaid, and costs and accruing costs, to satisfy the said judgment out of the personal property of the said debtor *alone* named or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to Charles Young on the day whereon said judgment was docketed in

the said county, or at any time hereafter, and make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness Hon. John Coburn, judge of the first judicial district of the Territory of Montana, at the court-house, in the county of Custer, this thirty-first day of May, A. D. 1884.

Attest my hand and the seal of said court hereto affixed on the day and year last above written.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

SHERIFF'S OFFICE, CUSTER COUNTY.

I hereby certify that I received the within execution on the 31st day of May, 1884; that I have in my possession the property heretofore levied upon by me by virtue of the writ of attachment issued in said action, and hold the same by virtue thereof; and, further, that, this writ not having been executed by the sale of said property, I return the same at the request of the attorney for the plaintiffs in said action this 29th day of July, 1884.

J. W. JOHNSON, *Sheriff.*

Filed July 29th, 1884.

306 In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

The people of the Territory of Montana to the sheriff of the said county of Custer, Greeting:

Whereas on the tenth day of May, A. D. 1884, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., recovered a judgment in the said district court of the first judicial district of the Territory of Montana in and for the county of Custer against Charles Young for the sum of seven hundred fifty-five and $\frac{93}{100}$ dollars damages, with interest thereon at the rate of ten per cent. per annum till paid, together with plaintiffs' costs and disbursements at the date of said judgment and accruing costs, amounting to the sum of two hundred and seventy ($270) dollars, as appears to us of record;

And whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, in the said county of Custer, and the said judgment was docketed in said clerk's office, in the said county, on the day and year first above written;

And the sum of $754.93, with interest thereon at the rate of ten per cent. per annum from the tenth day of May, 1884, and plaintiffs' costs, amounting to the sum of $270.00, and accruing costs, is now (at the date of this writ) actually due on said judgment:

Now, you, the said sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid and costs and accruing costs, to satisfy the said judgment out of the personal property of the said debtor above named, or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to said debtor on the day whereon said judgment was docketed in the said county
307 or at any time hereafter, and make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness Hon. John Coburn, judge of the first judicial district of the Territory of Montana, at the court-house, in the county of Custer, this twenty-ninth day of July, A. D. 1884.

Attest my hand and the seal of said court hereto affixed on the day and year above written.

[SEAL.] THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

A true copy.
Attest: THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

SHERIFF'S OFFICE, CUSTER COUNTY.

I hereby certify that I received the within execution on the 29th day of July, 1884; that I have in my possession the property heretofore levied upon by me by virtue of the writ of attachment issued in said action and hold the same by virtue thereof; and, further, that, the writ not having been executed by sale of said property, I return the same at the request of the attorney for the plaintiffs in said action this 26th day of September, 1884.

Sheriff's fees:

Service	$1 00
Mileage	40
Total	$1 40

Dated this 26th day of September, 1884.

J. W. JOHNSON, *Sheriff.*

Filed September 30, 1884.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

The people of the Territory of Montana to the sheriff of the said county of Custer, Greeting:

308 Whereas on the 10th day of May, A. D. 1884, Bruno Beaupre, Frank Keogh, and John F. Broderick, copartners as Beaupre, Keogh & Co., recovered a judgment in the said district court of the first judicial district of the Territory of Montana in and for the county of Custer against Charles Young for the sum of seven

hundred and fifty-four and $\frac{93}{100}$ dollars damages, with interest thereon at the rate of ten per cent. per annum till paid, together with plaintiffs' costs and disbursements at the date of said judgment and accruing costs, amounting to the sum of two hundred and seventy dollars, as appears to us of record;

And whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, in the said county of Custer, and the said judgment was docketed in said clerk's office, in the said county, on the day and year first above written;

And the sum of $754.93, with interest thereon at the rate of ten per cent. per annum, and plaintiffs' costs, amounting to the sum of $270, and accruing costs, is now (at the date of this writ) actually due on said judgment:

Now, you, the said sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid and costs and accruing costs, to satisfy the said judgment out of the personal property of the said debtor above named, or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to Charles Young on the day whereon said judgment was docketed in the said county or at any time hereafter, and make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness Hon. John Coburn, judge of the first judicial district of the Territory of Montana, at the court-house, in the county of Custer, this 25th day of September, A. D. 1884.

309 Attest my hand and the seal of said court hereto affixed on the day and year last above written.

[SEAL.] THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
[SEAL.] *Deputy Clerk.*

SHERIFF'S OFFICE, CUSTER COUNTY.

I hereby certify that I received the within execution on the 25th day of Sept., 1884; that I have in my possession the property heretofore levied upon by me by virtue of the writ of attachment issued in said action and hold the same by virtue thereof; and, further, that, this writ not having been executed by the sale of said property, I return the same at the request of the attorneys for the plaintiffs in said action.

Dated this 23*th* day of December, 1884.

J. W. JOHNSON, *Sheriff*,
By JAMES CONLEY,
Deputy Sheriff.

Filed Dec. 13, 1884.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

The people of the Territory of Montana to the sheriff of the said county of Custer, Greeting:

Whereas on the 10th day of May, A. D. 1884, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beau-
310 pre, Keogh & Co., recovered a judgment in the said district court of the first judicial district of the Territory of Montana in and for the county of Custer against Charles Young for the sum of $754.93 damages, with interest thereon at the rate of 10 per cent. per annum till paid, together with plaintiffs' costs and disbursements at the date of said judgment and accruing costs, amounting to $270, as appears to us of record;

And whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, in the said county of Custer, and the said judgment was docketed in said clerk's office of the said county on the day and year first above written;

And the sum of $754.93, with interest thereon at the rate of 10 per cent. per annum from May 10th, 1884, and plaintiffs' costs, amounting to the sum of $270, and accruing costs, are now (at the date of this writ) actually due on said judgment:

Now, you, the said sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid, and costs and accruing costs, to satisfy the said judgment out of the personal property of the said debtor above named; or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to Charles Young on the day whereon said judgment was docketed in the said county or at any time hereafter, and make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness Hon. John Coburn, judge of the first judicial district of the Territory of Montana, at the court-house, in the county of Custer, this 12th day of December, A. D. 1884.

Attest my hand and the seal of said court, hereto affixed, on the day and year last above written.

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

[SEAL.]

311 A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

[SEAL.]

Filed June 10th, 1885.

THEO. MUFFLY, *Clerk.*

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Charles W. Savage, as sheriff of the county of Custer, in the Territory of Montana, do hereby certify and return that the within

and annexed writ of execution came to my hands on the 15th day of December, 1884; that I did levy upon the personal property levied upon and then held by my predecessor in office, John W. Johnson, as sheriff, under the writ of attachment issued in the action wherein the judgment referred to in said execution was rendered, in which said action Bruno Beaupre, Frank Keogh, and John F. Broderick were plaintiffs and Charles Young was defendant, which personal property comprised the goods, merchandise, and personal property referred to in the return of said J. W. Johnson, as sheriff of said Custer county, the said writ of attachment; and I do further certify and return that I noticed the said property for sale, as required by law, *for* posting notices of the time and place of said sale, describing the said — for five days successively in the public places in the township of Forsyth, in said county, where said property was to be sold, and that on the 24th day of December, 1884, at 10 o'clock in the forenoon of said day, I did attend and offered for sale at public auction, at the store building formerly occupied by Charles Young, at Forsyth, in said county, the said property, and sold the whole of the same in separate parcels to various purchasers for the sum of six hundred seventy-seven and $\frac{90}{100}$ dollars, the said purchasers being the highest bidders and the said sum being the highest bid in the aggregate for the same; and I further certify that I deducted
312 from the proceeds of such sale the sum of twenty-four and $\frac{94}{100}$ dollars on account of my fees and expenses of sale, and that the remainder of said proceeds I turned over to the judgment creditors in said execution mentioned.

Dated this 10th day of June, 1885.

C. W. SAVAGE, *Sheriff*,
By J. W. JOHNSON,
Deputy Sheriff.

TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court, First Judicial District.

BEAUPRE, KEOGH *et al.* }
vs. }
CHARLES YOUNG. }

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of the Territory of Montana, do hereby certify that the annexed is a full, true, and correct copy of the judgment entered in the above-entitled action; and I further certify that the papers appended thereto are full, true, and correct copies of all the papers, pleadings, and proceedings now on file and of record in my office, and that the same constitutes the judgment-roll in said action.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

THEO. MUFFLY, *Clerk*,
[SEAL.] By LESLIE SULGROVE,
Deputy Clerk.

313 TERRITORY OF MONTANA, } ss:
County of Yellowstone, }

BRUNO BEAUPRE }
vs.
CHARLES YOUNG. }

I, John Coburn, associate justice of the Territory of Montana and judge of the first judicial district thereof, in which district is embraced and included the county of Custer, in said Territory, do hereby certify that Theo. Muffly is the duly appointed and qualified clerk of the district court of the first judicial district of said Territory, acting as such, and that Leslie Sulgrove is the duly appointed and qualified deputy clerk of said district court in and for the county of Custer, acting as such; and I do further certify that the attestation and certificates of said clerk by the said deputy clerk to each and every of the papers, records, and judicial proceedings hereto appended are in due form and are correct.

Dated this eleventh day of June, A. D. 1885.

JOHN COBURN, *Judge.*

TERRITORY OF MONTANA, } ss:
County of Custer, }

In the District Court of the First Judicial District in and for said County.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs, }
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants. }

The above-named plaintiffs, for a cause of action against the above-named defendants, complain and allege that said plaintiffs at all the times hereinafter mentioned were copartners and doing business as merchants at Saint Paul, in the State of Minnesota, under the firm name of Beaupre, Keogh & Company; that said de-
314 fendants are indebted to said plaintiffs in the sum of nine hundred and thirty-one and $\frac{44}{100}$ dollars for the balance of an account for goods, wares, and merchandise, to wit, groceries, sold and delivered by said plaintiffs to said defendants at the request of said defendants at various times between the 1st day of May, 1883, and the 20th day of November, 1883.

That the whole amount and aggregate value of the items charged to said defendants is the sum of $2,668.94, no part of which has been paid except the sum of $1,737.51, leaving the balance of said account in the said sum of $931.44 still unpaid.

That said defendants have not paid the said last-mentioned sum, the balance of said account, nor any part thereof.

Therefore plaintiffs demand judgment against said defendants for the sum of $931.44, with interest thereon from the 20th day of November, 1883, at the legal rate and for their costs in this action incurred.

STREVELL & GARLOCK,
Attorneys for Plaintiffs.

TERRITORY OF MONTANA, } ss:
County of Custer, }

JAMES H. GARLOCK, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs named in the foregoing complaint; that he has heard the same read and knows the contents thereof, and that the facts stated therein are true to his, said deponent's, best knowledge, information, and belief.

And deponent says, further, that the reason why this affidavit of verification is not made by said plaintiffs or either of them in person is that all of said plaintiffs are absent from the said county of Custer, where resides this deponent, their attorney.

——— ———.

315 Subscribed and sworn to before me this 2d day of January, 1884.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLAS,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the first judicial district of Montana Territory, do hereby certify the foregoing transcript is a full, true, and complete copy of the original complaint as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal, this 10th day of June, A. D. 1885.

[District Court Seal.]

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

Filed January 2, 1884.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

Writ of Attachment.

The people of the Territory of Montana to the sheriff of the county of Custer, Greeting:

Whereas the above-entitled action was commenced in the district court of the first judicial district of the Territory of Montana in and for the said county of Custer by the plaintiffs in said action to recover from the defendants, Young and Winchester, in the
316 said action the sum of nine hundred and thirty-one and $\frac{44}{100}$ dollars ($931.44), lawful money of the United States,

besides interest, at the rate of 10 per cent. per annum, from the 20th day of November, A. D. 1883, and costs of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you, the said sheriff, that you attach and safely keep all the property of said defendants, Young and Winchester, within your said county not exempt from execution or so much thereof as may be sufficient to satisfy the said plaintiffs' demand, as above mentioned, unless the said defendants give you security by an undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand besides costs or in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and hereof make due and legal service and return.

Witness hon. judge of the said district court of the first judicial district this 2d day of January, A. D. 1884.

Attest my hand and the seal of said court the day and year last above written.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

Filed February 9, 1884.

SHERIFF'S OFFICE, CUSTER COUNTY, MONTANA.

I do hereby certify that, by virtue of the annexed writ of attachment, on the 3d day of January, 1884, I levied upon and attached certain real and personal property as the property of Charles Young and C. A. Winchester, a full list of which said property is
317 attached to and made a part of the sheriff's return to a certain writ of attachment issued out of the district court of the first judicial district of the Territory of Montana in and for the county of Custer, in which said action Sig. Hanauer and Joseph Hanauer are the plaintiffs and Charles Young is the defendant, and which said list and sheriff's return is marked Exhibit "A," all of which said property was attached at the time and in the manner as described in said Exhibit "A;" and I do further certify that on the 3d day of January, 1884, I levied upon and attached, as required by law, all of the right, title, and interest of Charles Young and C. A. Winchester in and to lot number seven (7), block seventy-one (71), in Miles City, said county, together with all buildings and improvements thereon.

Dated Miles City, M. T., February 8, 1884.

J. W. JOHNSON, *Sheriff.*

Fees:

Service	$1 00
Copy	50c.
Filing copy	50c.
Copy with garnishee	50c.
Return	50c.
To Forsyth and ret., mileage	20 00
	$23 00

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original writ of attachment and sheriff's return thereof as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

318 In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Plaintiffs,
against
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

Action brought in the district court of the first judicial district of the Territory of Montana in and for the county of Custer, and the complaint filed in said county of Custer, in the office of the clerk of said district court.

The people of the Territory of Montana send greeting to Charles Young and Clarence A. Winchester, defendants:

You are hereby required to appear in an action brought against you by the above-named plaintiffs in the district court of the first judicial district of the Territory of Montana in and for the said county of Custer, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county—or if served out of this county, but in this district, then within twenty days; otherwise within forty days—or judgment by default will be taken against you, according to the prayer of said complaint.

The said action is brought to recover the sum of nine hundred and thirty-one and $\frac{44}{100}$ dollars for balance due on account due for goods, wares, and merchandise sold and delivered to plaintiffs at their request between the first day of May, 1883, and the twentieth day of March, 1883, with interest thereon at the legal rate from the twentieth day of November, 1883, and for their costs in this action incurred, as will more fully appear by reference to the complaint on file herein.

And you are hereby notified that if you fail to appear and
319 answer the said complaint, as above required, the said plaintiffs will take a default against you and apply to the court for the relief demanded in their complaint.

Given under my hand and the seal of the district court of the first judicial district of the Territory of Montana in and for the said

county of Custer this second day of January, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLAS,
Deputy Clerk.

OFFICE OF THE SHERIFF OF THE COUNTY OF CUSTER.

I hereby certify that I received the within summons on the second day of January, A. D. 1884, and personally served the same on the third day of January, A. D. 1884, on Charles Young at Forsyth, in the county of Custer, M. T., and on C. A. Winchester on the seventh day of January, 1884, in Miles City, Custer county, M. T., by delivering to and leaving with said Charles Young and C. A. Winchester, the defendants, personally, in the county of Custer, a copy of —.

Dated this 8th day of February, A. D. 1884.

J. W. JOHNSON, *Sheriff.*

Fees:

Service	75c.
2 copies	1 00
Ret.	50c.
Mil.	40c.
	$2 65

Filed February 9th, 1884.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original summons as appearing on file and of record in my office.

320

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

In the District Court of the First Judicial District of the Territory of Montana in and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Co-partners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

Undertaking on Attachment.

Whereas the above-named plaintiffs have commenced or are about to commence an action in the district court of the first judicial district of the Territory of Montana in and for the county of Custer

against the above-named defendants upon a contract for the direct payment of money, claiming that there is due to the said plaintiffs from the said defendants the sum of $931.44, lawful money of the United States, besides interest, and are about to apply for an attachment against the property of the said defendants as security for the satisfaction of any judgment that may be recovered therein:

Now, therefore, we, the undersigned, residents of the county of Custer, in consideration of the premises and of the issuing of the said attachment, do jointly and severally undertake in the sum of nineteen hundred ($1,900) dollars and promise to the effect that if the said defendants recover judgment or if the court shall
321 finally decide that the plaintiffs were not entitled to an attachment in said action the said plaintiffs will pay all costs that may be awarded to the said defendants and all damages which they may sustain by reason of the wrongful issuing out of the attachment, not exceeding the sum of $1,900.

Witness our hands and seals this 2nd day of January, 1884.

A. W. SLEEPER. [SEAL.]
BENJ. W. LADD. [SEAL.]

TERRITORY OF MONTANA, } ss:
County of Custer, }

A. W. SLEEPER and BENJAMIN W. LADD, whose names are subscribed as the sureties to the above undertaking, being severally duly sworn, each for himself says that he is worth the sum in the said undertaking specified as the penalty thereof over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

A. W. SLEEPER.
BENJ. W. LADD.

Subscribed and sworn to before me this 2nd day of January, A. D. 1884.

[SEAL.]

THEO. MUFFLY, *Clerk,*
By CHAS. DOUGLASS,
Deputy Clerk.

Filed January 2, 1885.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original undertaking on attachment as appearing on file and of record in my office.

322 In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.]

THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

In the District Court of the First Judicial District of the Territory of Montana in and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Co-partners as Beaupre, Keogh & Co., Plaintiffs,
versus
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

Affidavit for Attachment.

TERRITORY OF MONTANA, } ss:
County of Custer, }

JAMES H. GARLOCK, being duly sworn, says that he is one of the attorneys of plaintiffs in the above-entitled action; that the defendants in said action are indebted to said plaintiffs in the sum of nine hundred and thirty-one and $\frac{44}{100}$ dollars, lawful money of the United States, over and above all legal set-offs and counter-claims, upon both express and implied contract for the payment of money, to wit, the balance of an account for goods, wares, and merchandise sold and delivered by said plaintiffs to said defendants, at the request of said defendants, between the 1st day of May, 1883, and the 20th day of November, 1883; that the same is now due, and that the payment of the same is not secured by any mortgage, lien, or pledge upon real or personal property.

JAMES H. GARLOCK.

323 Subscribed and sworn to before me this 2nd day of January, A. D. 1884.

GEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

Filed January 2, 1884.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of the Territory of Montana, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original affidavit for attachment as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

[SEAL.]

In the District Court of the First Judicial District of the Territory of Montana in and for the County of Custer, *ss:*

BRUNO BEAUPRE *et al.*
v.
CHARLES YOUNG *et al.*

Demurrer.

Now come the defendants and demur to the complaint herein, and for grounds of demurrer say that the said complaint does not state facts sufficient to constitute a cause of action.

Dated January 7th, 1884.

WALTER A. BURLEIGH,
ANDREW F. BURLEIGH,
Defendants' Att'ys.

TERRITORY OF MONTANA, *County of Custer,* } *ss:*

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original demurrer as appearing on file and record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE, *Deputy Clerk.*

In the District Court of the First Judicial District in the Territory of Montana in and for the County of Custer, *ss:*

BRUNO BEAUPRE *et als.*, Partners, etc., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

The defendant Clarence A. Winchester, for himself, answering the complaint herein—

Denies that he is indebted to the plaintiffs in the sum of $931.44 or in any other sum for the balance on account for goods, wares, and merchandise sold and delivered by plaintiffs to defendants between the first day of May, 1883, and the 20th day of November, 1883, or at any other time or times; denies that there is a balance of an account in the sum of $931.44 still unpaid due from said de-
325 fendant, Winchester, to plaintiffs. Wherefore defendant Clarence A. Winchester demands judgment against the plaintiffs that he go hence with costs.

W. A. BURLEIGH,
Attorney for Defendants.

TERRITORY OF MONTANA, *County of Custer,* } *ss:*

CLARENCE A. WINCHESTER, being first duly sworn, says:

I am the defendant in the above-entitled action. I have read the

foregoing answer and know the contents, and the same is true of my own knowledge except as to the matters therein stated upon information and belief, and as to those matters I believe it to be true.

C. A. WINCHESTER.

Subscribed and sworn to before me this 21st day of April, 1884.

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the first district court, do hereby certify that the foregoing transcript is a full, true, and correct copy of the original answer of C. A. Winchester now on file in my office.

In witness whereof I have hereunto set my hand and seal this 10th day of June, A. D. 1885.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

Filed April 2, 1884.

326 TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court, First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Co-partners as BEAUPRE, KEOGH & Co., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

Please take notice that the annexed is a copy of the account referred to in plaintiffs' complaint in the above-entitled action and heretofore demanded of you.

Dated 26th April, 1884.

Yours, etc.,

STREVELL & GARLOCK,
Attorneys for Plaintiffs.

To W. A. Burleigh, attorney for defendants.

Charles Young and Clarence A. Winchester to Beaupre, Keogh & Co., Dr.

1883.				
May	10.	To mdse., 30 d.		32 00
	"	60		17 02
	11.	30		125 51
	"	60		53 78
	16.			14 00
	23.			31 39
	29.			42 28

1883.					
June	1.	30		27	54
	"	60		53	38
	4.			22	77
	5.	30		47	43
	"	60		30	15
	9.	30		33	65
	"	60		14	00
327					
June	20.			33	36
	"	30		29	21
	26.	60		19	25
	"	30		25	37
	28.	"		32	28
	"	60		19	40
	29.	30		180	43
July	9.	60		26	20
	10.	30		6	90
	20.	60		37	50
	21.	"		30	00
		"		74	08
		30		45	09
	30.	60		136	56
Aug.	1.			75	67
		30		38	35
	3.	60		7	04
	7.	30		27	55
	8.	60		32	67
	"	30		38	25
	14.			34	48
	"	60		13	60
Sept.	8.	30		77	43
	"	60		80	03
	"	"		36	40
	12.			17	51
	"	30		52	20
	19.			71	61
	26.	60		30	00
	28. C.,	fr't.		1	70
Oct.	5. M.,	60		88	20
	12.	30		76	25
		60		52	30
	18.	30		29	32
		60		11	00
	24.	30		18	20
	31.	1		170	86
328					
Oct.	31.	60		149	76
Nov.	13.			77	23
	19.			120	20
					2,868 94

Cr.

June	8.	By cash	$109 50	
	13.		50 00	
July	6.		39 35	
	10.		50 00	
	18.		124 84	
Aug.	6.		45 00	
	6.		136 80	
	6.		108 32	
	20.		32 31	
	23.		166 00	
Sept.	6.		122 06	
	17.		50 00	
	24.		53 75	
Oct.	11.		114 05	
	13.		260 64	
	17.	Mdse.	45 39	
	22.	"	4 40	
	31.	"	58	
Nov.	6.	Cash.	111 00	
	12.		113 51	
				$1,737 50
				$931 44

Territory of Montana, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of the Territory of Montana, do hereby certify that the
329 foregoing transcript is a full, true, and complete copy of the original notice and copy of account as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

[seal.]

THEO. MUFFLY, *Clerk.*
LESLIE SULGROVE,
Deputy Clerk.

Filed April 28, 1884.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Co-partners as Beaupre, Keogh & Co., Plaintiffs,
against
CHARLES YOUNG, Defendant.

Memorandum of Costs and Disbursements.

Disbursements.

Sheriff's fees	$4 15
Clerk's fees	10 00
Witness fees	
Sheriff's mileage	10 00
Care and guarding	118 70
Insurance	109 00
	$251 85

TERRITORY OF MONTANA, *County of Custer*, } *ss:*

JAMES H. GARLOCK, being duly sworn, deposes and says
330 that he is one of the attorneys for the plaintiffs in the above-entitled action, and, as such, is better informed relative to the above costs and disbursements than the said plaintiffs; that to the best of his knowlege and belief the items in the above memorandum contained are correct, and that the said disbursements have been necessarily incurred in the said action.

JAMES H. GARLOCK.

Subscribed and sworn to before me this 12th day of May, A. D. 1884.

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

[SEAL.]

A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

TERRITORY OF MONTANA, *County of Custer*, } *ss:*

In District Court, First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

At a regular term of said court begun and holden at Miles City, the county-seat of said county, on the 14th day of April, 1884.
Present: Hon. John Coburn, judge.

The above-entitled action having come on regularly for hearing upon the issue of law arising upon the complaint of the plaintiffs and the demurrer of the defendants thereto on the 18th day of April, 1884, and the said demurrer having been ordered by the court, and said defendant, Charles Young, not having asked or obtained
331 leave to answer said complaint, and no answer having been filed by him, said action having come on for hearing before the court on the 10th day of May, 1884, and the said action having been dismissed as against the said defendant, Clarence A. Winchester, the name of the said Winchester having been struck from said action, the said court finds that said plaintiffs are entitled to recover judgment in said action against the said defendant, Charles Young, for the sum demanded in said complaint, and orders that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the finding aforesaid, it is ordered and adjudged that the plaintiffs, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., do have and recover of and from said defendant, Charles Young, the sum of nine hundred and seventy-five and $\frac{40}{100}$ dollars ($975.40), with interest thereon, at the rate of 10 per cent. per annum, from the date hereof until paid, together with the costs and disbursements of said plaintiffs incurred in said action, amounting to the sum of two hundred fifty-one and $\frac{85}{100}$ dollars, and that said plaintiffs have execution therefor with accruing costs.

Judgment rendered May 10th, 1884.

JOHN COBURN, *Judge.*

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and correct copy of the original judgment as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal
332 of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.]

THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

In the District Court of the First Judicial District, County of Custer, Territory of Montana.

BEAUPRE, KEOGH & Co., Plaintiffs, }
vs.
CHARLES YOUNG, Defendant. }

Certificate to Judgment-Roll.

I, the undersigned, clerk of the district court of the county of Custer, Territory of Montana, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and

in Judgment Book No. A of said court, at pages 210, 211; and I further certify that the foregoing papers hereto annexed constitute the judgment-roll in said action.

Witness my hand and the seal of said court this 10th day of May, 1884.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLAS,
Deputy Clerk.

A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

Filed May 10th, 1884.

C. A. Winchester, assignee of Charles Young, to Beaupre, Keogh & Co., Dr.

333 EXHIBIT A.

1883.			
May	10.	30 d.	32 00
	10.	60	17 02
	10.	30	125 51
	11.	60	53 78
	16.	60	14 00
	23.	60	31 39
	29.	60	42 28
June	1.	30	27 54
	1.	60	53 38
	4.	60	22 77
	5.	30	47 43
	5.	60	30 15
	9.	30	33 65
	9.	60	14 00
	20.	60	33 36
	20.	30	29 31
	26.	60	19 25
	26.	30	25 37
	28.	30	32 28
	28.	60	19 40
	29.	30	180 43
July	9.	60	26 20
	10.	30	6 90
	20.	60	37 50
	20.	60	30 00
	21.	60	74 08
	21.	30	45 09
	30.	60	136 56
Aug.	1.	60	75 67
	1.	30	38 35
	3.	60	7 04

1883.					
Aug.	7.	30		27 55	
	8.	60		32 67	
	8.	30		38 25	
	14.	30		34 48	
334					
Sept.	8.	30		77 43	
	8.	60		80 03	
	8.	60		36 40	
	12.	60		17 51	
	12.	30		52 20	
	19.	To mdse., 30 I		71 61	
	26.	60		30 00	
	28.	Freight		1 70	
Oct.	5.	60		88 20	
	12.	30		76 25	
	12.	60		52 30	
	18.	30		29 32	
	18.	60		11 50	
	24.	30		18 20	
	31.	30		170 86	
	31.	60		149 76	
Nov.	13.	60		77 23	
	19.	60		120 20	
					$2,668 94
1883.			Cr.		
June	8.	Cash		109 50	
	13.	"		50 00	
July	6.	"		39 35	
	10.	"		50 00	
	18.	"		124 84	
Aug.	6.	"		45 00	
	6.	"		136 80	
	6.	"		108 32	
	20.	"		32 31	
	23.	"		166 00	
Sept.	6.	"		122 06	
	17.	"		50 00	
	24.	"		53 75	
Oct.	11.	"		114 05	
	13.	"		260 64	
	17.	Mdse.		45 39	
	22.	Cash		4 40	
	31.	"		58	
335					
Nov.	6.	Cash		111 00	
	12.	"		113 51	
					$1,737 50
					$931 44

EXHIBIT B.

ST. PAUL.

Charles Young, Forsyth, M. T., to Beaupre, Keogh & Co., Dr.

1882.				
June	17.	Mdse.,	60 d	457 56
	21.	"		37 20
	30.	"		13 35
July	25.		30	73 19
	25.		60	239 95
	27.		30	121 59
	27.		60	106 90
Aug.	11.	"		1 50
	22.	"		65 07
	22.		30	35 69
	31.		60	56 95
Sept.	18.	"		20 40
Sept.	27.	"		58 25
	27.		30	47 05
Oct.	11.		60	98 88
	11.		30	33 49
	26.		Cash	215 17
	26.	"		306 03
	27.		60	111 18
Nov.	3.	"		13 50
	4.		30	23 15
Dec.	4.	"		40 75
	4.		60	17 00
	30.		Int.	12 48
Jan.	17.		60	61 50
	17.		30	21 60
Feb.	3.	"		82 09
336				
Feb.	3.		60	60 58
	8.		30	37 29
	23.	"		61 03
	23.		60	32 80
M'ch	3.	"		62 04
	3.	"		39 60
	7.		30	97 61
	10.		60	16 24
	29.	"		110 12
	29.		30	62 90
Apr.	9.		60	16 15
	9.		30	46 15
	16.		60	33 35
	16.		60	9 60
	17.	"		10 03
	23.		30	10 12
				$3,077 08

1882.		Cr.		
June	8.	Cash	100 00	
July	22.	"	150 00	
Aug.	29.	"	250 00	
Oct.	7.	"	250 00	
	24.	"	150 00	
Nov.	13.	"	100 00	
	23.	"	100 00	
Dec.	1.	"	250 00	
	29.	"	125 00	
1883.				
———	—.	"	100 00	
Jan.	16.	"	25 00	
Feb.	6.	"	122 00	
Feb.	2.	"	50 00	
	19.	"	50 00	
M'ch	1.	"	100 00	
	23.	"	100 00	
Ap'l	7.	"	100 00	
337				
	9.	Cash	55 50	
	20.	"	100 75	
May	7.	"	100 12	
	10.	"	115 00	
				$2,393 37
				$683 71

TERRITORY OF MONTANA, } ss:
County of Custer, }

JAMES H. GARLOCK, being duly sworn, deposes and says that on the fourth day of October, 1884, at the said county of Custer, he served the annexed notice of motion, with the affidavit thereto attached, upon Walter A. Burleigh, the attorney for the defendants therein named, by delivering true copy thereof and of all of them to him personally and leaving the same with him.

JAMES H. GARLOCK.

Subscribed and sworn to before me this 9th day of October, 1884.

THEO. MUFFLY, *Clerk,*
By H. J. HASKELL, *Deputy.*

TERRITORY OF MONTANA, } ss:
County of Custer, }

In the District Court of the First Judicial District in and for Said County.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

FRANK KEOGH, after being duly sworn, deposes and says as follows:

I am one of the plaintiffs in this action. The plaintiffs
338 have been partners for more than four years last past. I have some slight acquaintance with the defendant Young, but have never been acquainted with the defendant Winchester at all. I knew of the assignment made by defendant Young to the defendant Winchester shortly after it was made. I was then informed that said Young had made an assignment to said Winchester for the benefit of creditors of said Young. After that information was received the plaintiffs sold and shipped to said Winchester, at his request, the goods upon account current. These goods were purchased by Mr. Winchester in his capacity as assignee of said Young. We knew him in no other capacity. We gave him the credit as such assignee and not otherwise. We had no knowledge as to what he was worth individually, and took no account of what he was worth individually in allowing him to run said bill. I refer to the bill, a copy of which is hereto attached and marked Exhibit "A." At the time of his assignment said Young was indebted to us, and a true copy of his account is attached hereto and marked Exhibit "B." Both of said accounts are correct, just, complete, and true. On the nineteenth day of December last I caused to be made a copy of said two accounts just as they are set forth in said two exhibits, and I sent them both to the law firm of Strevell & Garlock, at Miles City, Montana, with instructions to collect the same. After that I understood that suits had been brought upon each of said claims, and I suppose, of course, that one of said suits was against Charles Young and the other against Winchester. About a month ago I was first informed that suit was brought against said Winchester and Young jointly upon said account of said Winchester, and that judgment had been taken in that suit against said Young and not against said Winchester. This information was a complete surprise to me, and I do not understand now and never have understood how or why such judgment came to be so taken.

339 I had all to do with sending said accounts to said firm of Strevell & Garlock, and there was nothing either in the statement which was sent or in my letter to them indicating that the claim was against anybody but Winchester. As soon as I learned

what had been done I wrote and caused to be written letters to said firm correcting their misapprehension as to the circumstances and with a view of determining what more had to be done with regard to said judgment. The taking of said judgment against said Young alone was not done with our knowledge or consent and was done by said firm of Strevell & Garlock through some misapprehension as to what the real facts in regard to the said claim against said Winchester were. I am informed that in said action property of said Winchester, as such assignee, was attached to an amount possibly sufficient to secure said claim against him, and I fear said claim will be wholly lost unless said mistake be corrected and said judgment opened and our said action proceed to judgment against said Winchester.

FRANK KEOGH.

Sworn and subscribed before me this 19th day of September, A. D. 1884.

E. D. YORK,

[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original affidavit of Frank Keogh as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

340 TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court in the First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

TERRITORY OF MONTANA, } ss:
County of Custer, }

JAMES H. GARLOCK, being duly sworn, deposes and says:

That he is one of the firm of Strevell & Garlock, attorneys for the plaintiffs in the above-entitled action, and that this affidavit is made by him as such attorney in support of a motion on behalf of said plaintiffs for an order in said action that the order heretofore made therein on the tenth day of May, A. D. 1884, dismissing said action as against the defendant Clarence A. Winchester be vacated and

set aside and that the judgment entered therein on said day be also vacated.

That, as such attorney, some time in the month of December, 1883, he received from said plaintiffs by mail the claim and account upon which said action was commenced and brought.

That he is and has been for more than two years last past acquainted with both of the defendants, and knew of said Young as doing and carrying on a general merchandising business at Forsyth, in said county.

That some time in April or May, 1883, as deponent now remembers, he was informed that the said defendant, Young, at or about that time made an assignment of his property for the benefit of his creditors to said defendant, Winchester.

That said property consisted mostly of a general and miscellaneous stock of goods and merchandise, then being in
341 the store building occupied by said Young at Forsyth aforesaid.

That he, deponent, had afterwards and at various times during said year 1883 occasion to make inquiry about the said assigned property and business of said Young and the manner in which the same was being conducted and carried on; that upon such inquiry deponent was at various times informed by persons living at said Forsyth, and who as deponent was informed and believed knew about the same; that said Young had been and was most of the time still in the possession, management, and control of said property and said business; that, as the deponent was informed and believes, said Young had been since the time of the making of said alleged assignment receiving goods and merchandise at said store where the said business had been and was carried on, which goods and merchandise were being added to and disposed of by both of said defendants, together with the stock of merchandise claimed to have been assigned to said Winchester as aforesaid.

That from all the information deponent was able to obtain he was led to believe that, while said business was pretended to be carried on by said Winchester and in his name as assignee, it was, in fact, being transacted as the business and under the direction and the said goods being added to said stock upon the purchase and orders of said Young; and deponent says that he was then led to believe, at that time, the goods and merchandise mentioned and referred to in the account of said plaintiffs, upon which this action was brought, were part of the same goods and merchandise which, as aforesaid, had been bought and added to said stock.

And deponent says that soon after receiving the said claims and account from said plaintiffs he made further inquiry as to the said business and the said property and stock of merchandise; that he found that said Winchester had for some time been absent from said Forsyth and said business, and that said Young was in
342 the full control and management of the same; that he was in possession of the said goods and merchandise, and that he was disposing of the same, including the goods added to said stock

by purchases as aforesaid made after the said alleged assignment; that, as deponent is informed and believes, said Young was not, at the time of the commencement of this action and the making of the attachment of said property therein, in possession thereof and claiming to own and control the same.

And deponent says further that, as he was informed and believes, the goods and merchandise sold by plaintiffs upon said account and for the recovery of the price of which this action is brought, were a part of the goods and merchandise added and put into said stock as aforesaid; that as he, deponent, was informed and believes from the information obtained as aforesaid and from conversation had with said Winchester, that the goods and merchandise mentioned in the account of said plaintiffs were sold by them principally on the credit of said Young, and that said Winchester was only jointly with him, if at all, liable to pay for the same.

And deponent says that, acting upon such information and belief, he commenced the said action against said defendants, and that, still believing the facts to be as hereinbefore set forth, he procured judgment to be entered against said Young in said action on the 10th day of May, 1884, in said court and suffered and permitted the said action to be dismissed as against the said Winchester.

And deponent says that said judgment was entered and the said order of dismissal made through mistake as to the facts in said case; that, as he has since been informed by said plaintiffs, the goods and merchandise sold by them upon the account on which said action was brought were sold solely upon the account and credit of said Winchester, and not in any way upon the account and credit of said Young; that he has read the affidavit of Frank Keogh,
343 one of the plaintiffs, made in support of this motion, and that, as appears from said affidavit, judgment in said action should be against said Winchester upon said account, and the same should not have been dismissed as against him; and deponent says that had he known the facts as to the liability of said Winchester upon the said account as set forth in said affidavit and had he not been under a mistake and misapprehension of the same he should not have taken judgment against said Young or permitted said action to be dismissed as against said Winchester.

JAMES H. GARLOCK.

Subscribed and sworn to before me this 3d day of October, A. D. 1884.

WILLIAM COURTENAY,
Notary Public.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original affidavit of Jas. H. Garlock, as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

TERRITORY OF MONTANA, *County of Custer*, } ss:

District Court, First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Plaintiffs,
against
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

344 Please take notice that the plaintiffs in the action above entitled will move the judge of the district court of the first judicial district of said Territory, at chambers, at the court-house in Glendive, in the county of Dawson, in said district and Territory, on Thursday, the 9th day of October, 1884, at 10 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard for an order in said action—

That the order heretofore made in said action on the 9th day of May, 1884, dismissing said action as against the defendant Clarence A. Winchester be vacated and set aside.

That the judgment heretofore entered in said action against the defendant Charles Young be also reopened, vacated, and set aside; that the said action proceed against both of said defendants, with all proceedings had and taken therein prior to said 10th day of May, 1884, remaining of full force and effect as the same existed prior to the entry of said order and judgment, and that said plaintiffs have such other or further order as may be just. This said motion will be made on the ground that said action was dismissed as against said defendant Winchester and the said judgment entered through mistake and inadvertence on the part of said plaintiffs, and will be based and heard upon the affidavits of Frank Keogh, one of said plaintiffs, and James H. Garlock, one of their attorneys, which are hereto attached, and upon all the pleadings, papers, records, and files in said action.

Dated this 3rd day of October, 1884.

STREVELL & GARLOCK,
Attorneys for Plaintiffs.

To the defendants in said action and Walter A. Burleigh, Esq., attorney for said defendants.

SHERIFF'S OFFICE, CUSTER COUNTY, M. T.

I do hereby certify that I received this notice on the 4th day
345 of October, 1884, and personally served the same on the 4th day of October, 1884, by delivering to and leaving with Clarence A. Winchester, one of the defendants herein named, a true and

full copy of this said notice, the affidavit and a statement of account attached thereto as hereto attached.

All done at Miles City, Custer county, M. T., and dated this 4th day of October, 1884.

J. W. JOHNSON, *Sheriff.*

Sheriff's fees:

Service	75
Mileage	40
	$1 15

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district, Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original notice of motion to vacate order and dismissal as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.] THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

Filed Oct. 4, 1884.

TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court, First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

On reading the affidavits of Frank Keogh and James H. Garlock and the notice of motion on the part of said plaintiffs
346 attached thereto and filed in the above action on the fourth day of October, 1884, and proof having been made of due service thereof, and it appearing to me therefrom that the order heretofore made in said action on the tenth day of May, 1884, and the judgment entered therein on said day, which are hereinafter referred to, were made and entered therein through mistake and inadvertence on the part of said plaintiffs; and it further appearing that said order and judgment should be vacated, reopened, and set aside, on motion of Strevell & Garlock, of counsel for said plaintiffs, and after hearing Walter A. Burleigh, Esq., attorney for the defendants, it is ordered that the order heretofore made in said action on the tenth day of May, 1884, dismissing said action as against the defendant Clarence A. Winchester and the dismissal thereof as against

him be, and the same is hereby, vacated and set aside; and, further, that the judgment heretofore entered in said action on said day against the defendant Charles Young be also, and the same is hereby, reopened, vacated, and set aside; and it is further ordered that said action proceed against said defendants with all orders, writs, process, leaves, and proceedings had and taken therein prior to said tenth day of May, 1884, remaining of full force and effect as the same existed prior to the entry of said dismissal and judgment; and, further, that said defendants have until the first day of the next ensuing term of said court in and for said county in which to answer the complaint in said action.

JOHN COBURN,
Judge First Judicial District of Montana.

Done in chambers, at Glendive, Dawson county, Montana.

Attest my hand and seal of the district court of the first judicial district in and for Custer county, October 10th, 1884.

THEO. MUFFLY, *Clerk*,
[SEAL.] By CHAS. DOUGLASS,
Deputy Clerk.

A true copy.

347 SHERIFF'S OFFICE, CUSTER COUNTY, MONTANA.

I do hereby certify that I served the within order on the 13th day of October, 1884, by delivering to Clarence A. Winchester, one of the defendants therein named, a true copy of the within order, and also by delivering to Walter A. Burleigh, the attorney of the defendants therein named, a true copy of the within order, and that I have made diligent search and inquiry, and that I cannot find the said Charles Young, one of the defendants therein named, in Custer county, Montana.

Dated at Miles City, October 14th, 1884.

J. W. JOHNSON, *Sheriff.*

Sheriff's fees:

Service	75
Mileage	40
3 copies	3 90
	$4 05

SHERIFF'S OFFICE, CUSTER COUNTY, MONTANA.

And I do further certify that at Forsyth, Custer county, Montana T'y, I perfected the service of this order on the 22d day of October, 1884, by delivering to and leaving with the within-named Charles Young a true and full copy of said order and by exhibiting the seal of the court on this order to him, the said Charles Young.

Dated at Miles City, Custer county, Montana T'y, this day, October 24th, 1884.

Sheriff's fees, $—.

Mileage to Forsyth, $18.00.

J. W. JOHNSON, *Sheriff.*

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial
348 district of the Territory of Montana, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original order vacating dismissal and judgment as it appears on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A.D. 1885.

THEO. MUFFLY, *Clerk.*
[SEAL.] LESLIE SULGROVE,
Deputy Clerk.

Filed Oct. 10, 1882.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

The people of the Territory of Montana to the sheriff of the said county of Custer, Greeting:

Whereas, on the tenth day of May, A. D. 1884, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., recovered a judgment in the said district court of the first judicial district of the Territory of Montana in and for the county of Custer, against Charles Young for the sum of nine hundred seventy-five $\frac{40}{100}$ dollars damages, with interest thereon at the rate of ten per cent. per annum till paid, together with plaintiffs' costs and disbursements at the date of said judgment and accruing costs, amounting to the sum of two hundred fifty-one $\frac{85}{100}$ dollars, as appears to us of record;

And whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, in said county of Custer, and the said judgment was docketed in said clerk's office, in the said county, on the day and year first above written, and the sum of $975.40, with interest as aforesaid and plaintiffs' costs, amounting to two hundred fifty-one $\frac{85}{100}$ dollars and accruing costs, is now (at the date of this writ) actually due on said judgment:

349 Now, you, the said sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid and costs and accruing costs, to satisfy the said judgment out of the personal property of the said debtor, Charles Young, or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to Charles Young on the day whereon said judgment was docketed in the said county, or at any time hereafter, and make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness Hon. John Coburn, judge of the first judicial district of the Territory of Montana, at the court-house, in the county of Custer, this thirty-first day of May, A. D. 1884.

Attest my hand and the seal of said court hereto affixed on the day and year last above written.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

SHERIFF'S OFFICE, CUSTER COUNTY.

I hereby certify that I received the within execution on the 31st day of May, 1884; that I have in my possession the property heretofore levied upon by me by virtue of the writ of attachment issued in said action and hold the same by virtue thereof; and, further, that, this writ not having been executed by the sale of said property, I return the same at the request of the attorney for the plaintiffs in said action this 29th day of July, 1884.

J. W. JOHNSON, *Sheriff.*

Filed July 29th, 1884.

350 In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

The people of the Territory of Montana to the sheriff of the said county of Custer, Greeting:

Whereas on the tenth day of May, A. D. 1884, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., recovered a judgment in the said district court of the first judicial district of the Territory of Montana in and for the county of Custer against Charles Young for the sum of nine hundred and seventy-five and $\frac{40}{100}$ dollars damages, with interest thereon at the rate of ten per cent. per annum till paid, together with plaintiffs' costs and disbursements at the date of said judgment and accruing costs, amounting to the sum of two hundred and fifty-one $\frac{85}{100}$ ($251.85) dollars, as appears to us of record;

And whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court in the said county of Custer, and the said judgment was docketed in said clerk's office in the said county on the day and year first above written, and the sum of $975.40, with interest thereon, at the rate of ten per cent. per annum, from the tenth day of May, 1884, and plaintiffs' costs, amounting to the sum of $251.85, and accruing costs, is now (at the date of this writ) actually due on said judgment:

Now, you, the said sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid and costs and accruing costs, to satisfy the said judgment out of the personal property of the said debtor above named, or if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to said debtor on the

day whereon said judgment was docketed in the said county
351 or at any time hereafter, and make return of this writ within (60) sixty days after your receipt hereof with what you have done endorsed hereon.

Witness Hon. John Coburn, judge of the first judicial district of the Territory of Montana, at the court-house, in the county of Custer, this twenty-ninth day of July, A. D. 1884.

Attest my hand and the seal of said court hereto affixed on the day and year last above written.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

SHERIFF'S OFFICE, CUSTER COUNTY.

I hereby certify that I received the within execution on the 29th day of July, 1884; that I have in my possession the property heretofore levied upon by me by virtue of the writ of attachment issued in said action and hold the same by virtue thereof, and, further, that the writ not having been executed by sale of said property I return the same, at the request of the attorney for the plaintiffs in said action, this 26th day of September, 1884.

Sheriff's fees: Service, $1.00; mileage, $0.40; total, $1.40.

Dated this 26th day of September, 1884.

J. W. JOHNSON, *Sheriff.*

Filed September 30, 1884.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

The people of the Territory of Montana to the sheriff of the said county of Custer, Greeting:

352 Whereas on the 10th day of May, A. D. 1884, Bruno Beaupre, Frank Keogh, and John F. Broderick, copartners as Beaupre, Keogh & Co., recovered a judgment in the said district court of the first judicial district of the Territory of Montana in and for the county of Custer against Charles Young for the sum of nine hundred and seventy five and $\frac{40}{100}$ dollars damages, with interest thereon at the rate of ten per cent. per annum till paid, together with plaintiffs' costs and disbursements at the date of said judgment and accruing costs, amounting to the sum of two hundred and fifty-one and $\frac{85}{100}$ dollars, as appears to us of record; and

Whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court in the said county of Custer, and the said judgment was docketed in said clerk's office in the said county on the day and year first above written, and the sum of $975.40, with interest as aforesaid, and plaintiffs' costs, amounting to two hundred fifty-one $\frac{85}{100}$ dollars, and accruing

costs, is now (at the date of this writ) actually due on said judgment:

Now, you, the said sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid and costs and accruing cossts, to satisfy the said judgment out of the personal property of the said debtor, Charles Young, or if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to Charles Young on the day whereon said judgment was docketed in the said county or at any time hereafter, and make return of this writ within sixty days after your receipt hereof with what you have done endorsed hereon.

Witness Hon. John Coburn, judge of the first judicial district of the Territory of Montana, at the court-house, in the county of Custer, this 25th day of September, A. D. 1884.

353 Attest my hand and the seal of said court hereto affixed on the day and year last above written.

[SEAL.] THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
[SEAL.] *Deputy Clerk.*

SHERIFF'S OFFICE, CUSTER COUNTY.

I hereby certify that I received the within execution on the 25th day of Sept., 1884; that I have in my possession the property heretofore levied upon by me by virtue of the writ of attachment issued in said action and hold the same by virtue thereof, and further, that this writ not having been executed by the sale of said property I return the same at the request of the attorneys for the plaintiffs in said action.

Dated this 13th day of December, 1884.

J. W. JOHNSON, *Sheriff*,
By JAMES CONLEY,
Deputy Sheriff.

Filed Dec. 13, 1884.

TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court, First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

In the above-entitled action it is hereby stipulated and
354 agreed by and between the defendant Clarence A. Winchester and the plaintiffs in said action that the said Winchester

do and he hereby consents that his answer filed in said action be withdrawn, and that said plaintiffs have judgment against him in said action for the amount claimed by them in their complaint and their costs.

Dated November 28, 1884.

C. A. WINCHESTER,
STREVELL & GARLOCK,
Att'ys for Pl'ffs.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, correct, and complete copy of the original stipulation that judgment be entered as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

Filed Nov. 29th, 1884.

[SEAL.]

THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court, First Judicial District.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners as Beaupre, Keogh & Co., Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

At a regular term of said court begun and holden at the
355 court-house, in Miles City, the county-seat of said county, on Monday, the 3rd day of November, 1884.

Present: Hon. John Coburn, associate justice of said Territory.

The above-entitled action being at issue between the plaintiffs therein and the defendant Clarence A. Winchester, the same came on regularly for trial before the court on the ninth day of November, 1884; whereupon the said defendant, Winchester, having withdrawn his answer heretofore filed in said action, agrees that judgment be entered against him and in favor of said plaintiffs for the amount claimed by them in their complaint on file in said cause, and for costs.

Whereupon the court, having heard the evidence of said plaintiffs, finds that said defendant, Winchester, is indebted to said plaintiffs on account for goods and merchandise sold and delivered by them to said defendant, Winchester, at his request in the sum demanded by them in said complaint, with interest thereon from Nov. 20, 1883, at the legal rate, and orders that judgment be entered accordingly.

Wherefore, by reason of the law and the premises aforesaid, it is

ordered and adjudged that the plaintiffs, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., do have and recover of and from said defendant, Clarence A. Winchester, the sum of ten hundred twenty-six and $\frac{90}{100}$ dollars ($1,026.90), with interest thereon, at the rate of ten per cent. per annum, from the date hereof until paid, together with the costs and disbursements of said plaintiffs incurred in said action, amounting to the sum of nine hundred sixty-eight dollars forty-five one hundredths ($968.45), and that said plaintiffs have execution therefor, with accruing costs.

Judgment rendered Nov. 29th, 1884.

JOHN COBURN, *Judge.*

356 TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original judgment against the defendant Winchester as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1885.

THEO. MUFFLY, *Clerk,*
By LESLIE SULGROVE,
Deputy Clerk.

[SEAL.]

EXHIBIT A.

Beaupre, Keogh & Co. (in case *vs.* Charles Young and C. A. Winchester) to sheriff's office, Custer county, Montana, Dr.

1884.			
Jan. 3.	Serving summons, two copies	1	75
	Return, mileage		90
	Serving attachment, mileage	1	00
	To Forsyth and return	20	00
	Serving copy with garnishee, copy	1	00
	Filing copy, return	1	00
Feb. 6.	Your *pro rata* on inventory	8	30
	" " " on mileage on inventory	8	30
	Your *pro rata* on guarding property from Jan. 3 to Feb. 8, 1884, @ $5 per day	76	75
	Your *pro rata* on guarding property from Feb. 8 to 17 @ $1 per day	4	15
357	Your *pro rata* on wood, hay, and door lock	8	35
	Your *pro rata* on insurance	50	00
	To serving affidavit on Winchester		75
	Copy, 50c.; return, 50c.; mileage, 40c.	1	40
	Approving bond	1	00
May 10.	Your *pro rata* care of property for eighty-four days	42	00

1884.				
Sept. 26.	Levying execution, $1.00; mileage, 40c.		1 40	
Oct. 4.	Serving notice, 75c.; mileage, 40c.		1 15	
" 14.	Serving order, 75c.; three copies, $3.40.; mileage, 40c.		5 05	
" 22.	Mileage to Forsyth and return		18 00	
				$252 25
	Proportion of expenses holding property from May 10, 1884			262 20
				$514 45
	To insurance from May 10			310 00
				$824 45

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

BRUNO BEAUPRE *et al.*, Plaintiffs,
vs.
CLARENCE A. WINCHESTER *et al.*, Defendants.

Memorandum of Costs and Disbursements.

Disbursements.

Clerk's fees		$10 00
	Fee commission for taking depositions in St. Paul	25 00
358	Fee of sheriff and his disbursements as per attached statement	514 45
Cash disbursements for insurance of property under attachment		419 00
		$968 45

TERRITORY OF MONTANA, *County of Custer*, } *ss:*

JAMES H. GARLOCK, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs in the above-entitled action, and as such is better informed relative to the above costs and disbursements than the said plaintiffs; that to the best of his knowledge and belief the items in the above memorandum contained are correct, and that the said disbursements have been necessarily incurred in the said action.

JAMES H. GARLOCK.

Subscribed and sworn to before me this 12th day of December, A. D. 1884.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

A true copy.
Attest:

THEO. MUFFLY, *Clerk.*

32—160

COUNTY OF CUSTER:

In the District Court of the First Judicial District, County of Custer, Territory of Montana.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

Certificate to Judgment-Roll.

359 I, the undersigned, clerk of the district court of the county of Custer, Territory of Montana, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action and in Judgment Book No. A of said court, at pages 211, 212; and I further certify that the foregoing papers hereto annexed constitute the judgment-roll in said action.

Witness my hand and the seal of said court this 29th day of November, 1884.

THEO. MUFFLY, *Clerk*,
By CHAS. DOUGLASS,
Deputy Clerk.

[SEAL.]

Filed July 29, 1884.
A true copy.

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

In the District Court of the First Judicial District of the Territory of Montana within and for the County of Custer.

The people of the Territory of Montana to the sheriff of the said county of Custer, Greeting:

Whereas on the 29th day of Nov., A. D. 1884, Bruno Beaupre, Frank Keogh, and John F. Broderick, as copartners as Beaupre, Keogh & Co., recovered a judgment in the said district court of the first judicial district of the Territory of Montana in and for the county of Custer against Clarence A. Winchester for the sum of $1,026.90 damages, with interest thereon at the rate of ten per cent. per annum until paid, together with plaintiffs' costs and disbursements at the date of said judgment and accruing costs, amounting to the sum of $968.45, as appears to us of record;

360 And whereas the judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, in the said county of Custer, and the said judgment was docketed in said clerk's office of the said county on the day and year first above written;

And the sum of $1,026.90, with interest thereon at the rate of 10 per cent. per annum from May 10th, 1884, and plaintiffs' costs, amounting to the sum of $968.45, and accruing costs, are now (at the date of this writ) actually due on said judgment:

Now, you, the said sheriff, are hereby required to make the said sums due on said judgment for damages, with interest as aforesaid and costs and accruing costs, to satisfy the said judgment out of the personal property of the said debtor above named, or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to Clarence A. Winchester on the day whereon said judgment was docketed in the said county or at any time hereafter, and make return of this writ within sixty days after your receipt hereof, with what you have done endorsed hereon.

Witness Hon. John Coburn, judge of the first judicial district of the Territory of Montana, at the court-house, in the county of Custer, this 12th day of December, A. D. 1884.

Attest my hand and the seal of said court, hereto affixed, on the day and year last above written.

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

[SEAL.]

A true copy.
Attest:

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

Filed June 10th, 1885.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Charles W. Savage, as sheriff of the county of Custer,
361 in the Territory of Montana, do hereby certify and return that the within and annexed writ of execution came to my hands on the 15th day of December, 1884; I did thereupon and by virtue of the said writ levy upon the personal property theretofore levied upon and then held by my predecessor in office, John W. Johnson, as sheriff, under the writ of attachment issued in the action wherein the judgment referred to in said execution was rendered, in which said action Bruno Beaupre, Frank Keogh, and John F. Broderick are plaintiffs and Charles Young and Clarence A. Winchester are defendants, which personal property comprised the goods, merchandise, and personal property referred to in the return of said J. W. Johnson, as sheriff of said Custer county, the said writ of attachment; and I do further certify and return that I noticed the said property for sale, as required by law, *for* posting notices of the time and place of said sale, describing the said property, for five days successively in the public places in the township of Forsyth, in said county, where said property was to be sold, and that on the 24th day of December, 1884, at 10 o'clock in the forenoon of said day, I did attend and offered for sale at public auction, at the store building formerly occupied by Charles Young, at Forsyth, in said county, the said property, and sold the whole of the same in separate parcels to various purchasers for the sum of six hundred seventy-seven and $\frac{00}{100}$ dollars, the said purchasers being

the highest bidders and the said sum being the highest bid in the aggregate for the same; and I further certify that I deducted from the proceeds of such sale the sum of twenty-four and $\frac{94}{100}$ dollars on account of my fees and expenses of sale, and that the remainder of said proceeds I turned over to the judgment creditors in said execution mentioned.

Dated this 10th day of June, 1885.

C. W. SAVAGE, *Sheriff*,
By J. W. JOHNSON,
Deputy Sheriff.

362 In the District Court of the First Judicial District of the Territory of Montana in and for the County of Custer.

BRUNO BEAUPRE, FRANK KEOGH, and JOHN BRODERICK, Plaintiffs,
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER, Defendants.

The defendant Clarence A. Winchester moves the court that the judgment entered against him on stipulation at the November term of this court, 1881, in this action and all subsequent proceedings thereunder be set aside and vacated for the reason that the said stipulation and judgment were obtained through the inadvertence, surprise, and excusable neglect of said defendant, and by undue advantage taken of him by plaintiffs and their attorneys. This motion is based on all the papers in this action and an affidavit of Clarence A. Winchester filed herein.

ANDREW F. BURLEIGH,
Defendants' Attorney.

In the District Court of the First Judicial District of the Territory of Montana in and for the County of Custer.

BRUNO BEAUPRE *et al.*, Plaintiffs,
vs.
CLARENCE A. WINCHESTER *et al.*, Defendants.

TERRITORY OF MONTANA, } *ss:*
County of Custer, }

CLARENCE A. WINCHESTER, being duly sworn on his own behalf, says:

I am the defendant in the above-entitled action, and the summons has been served upon me.

363 2. That I have filed an answer in said action which denies the facts alleged in the complaint, and, as I am advised by my counsel and really believe, I have a good and substantial defense thereto on the merits.

3. That through mistake, inadvertence, surprise, and misrepre-

sentation I was induced by James H. Garlock, Esq., of counsel for the plaintiffs, to sign a certain paper, the exact contents of which I cannot now recall and which my counsel informs me cannot be found among the papers on file in the case, but which, to my best recollection and belief, provided for a withdrawal of my said answer and permission to said plaintiffs to take judgment against me for a certain sum therein specified; that I was induced by said Garlock to sign said paper on the day preceding the last day of the term of court held in said county in the month of November, 1884, and that said paper, as I am informed and believe, was presented to the court and judgment obtained against me on the last day and in the night thereof of said term; that relying upon the representations made to me by said Garlock in reference thereto I neglected to see and consult with my counsel; that said Garlock represented to me that the debt — such as was received by me as assignee of one Charles Young, and that as such assignee I was liable to pay the same out of the assigned property held by me in trust for the creditors of the said Young; that any homestead in Miles City theretofore attached in said action by the sheriff at the instigation of said Garlock should be released from said attachment if I would sign said paper; that the affiant was impressed by the belief by what said Garlock said, the exact words he cannot now remember, and believed that unless he signed said paper his homestead would be sold and himself and family deprived thereof, and that, moved by that fear and the promise of said Garlock that it should be released and that judgment would only be taken against him in his capacity as assignee, he signed the same, whereby plaintiffs obtained the judgment against him in this action.

That if said Garlock had not held out such inducements
364 to affiant and oppressed him with such fears and advised him contrary to what affiant is advised and now duly believes the law to be, he would never have consented to the entry of such judgment; that affiant is informed and believes that said plaintiffs, instead of taking judgment against him in his said representative capacity, took a personal judgment against him, and that the same now stands upon the record of this court a lien upon the affiant's real property which affiant now owns or may hereafter acquire within six years; that said Garlock, as counsel for the plaintiffs, promised affiant that if he would permit said judgment to be taken against him they, said plaintiffs, would bid the full amount of said judgment and costs for the said assigned property, so that after the same was sold there would be no judgment remaining against affiant, but that said promise was not kept, and said judgment for a large sum now stands upon said records against affiant; that affiant is informed and believes that said homestead has not been released from attachment, as was promised as aforesaid.

Wherefore affiant believes that an unfair advantage was taken of him, and so, believing that it would be unfair and against public policy for the court to permit its attorneys to take such unconscionable advantage of one less versed in the law than said attorneys, affiant

prays that said judgment may be vacated and set aside and this affiant permitted to defend said action upon the merits.

C. A. WINCHESTER.

Subscribed and sworn to — me this 24th day of January, 1885.

WILLIAM C. STAEHLE,
Probate Judge.

TERRITORY OF MONTANA, } ss:
County of Custer, }

365 I, Theo. Muffly, clerk of the district court of the first judicial district of the Territory of Montana, do hereby certify that the foregoing transcript is a full, true, and complete copy of the original affidavit of Clarence A. Winchester as appearing on file and of record in my office.

In witness whereof I have this day set my hand and seal of the above-named court, this 10th day of June, A. D. 1884.

Filed February 11th, 1885.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

District Court, First Judicial District:

BEAUPRE, KEOGH, *et al.* }
vs.
CHARLES YOUNG *et al.* }

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, Theo. Muffly, clerk of the district court of the first judicial district of the Territory of Montana, do hereby certify that the annexed is a full, true, and correct copy of the judgment entered in the above-entitled action, and I further certify that the papers appended thereto are full, true, and correct copies of all the papers, pleadings, and proceedings now on file and of record in my office, and that the same constitute the judgment-roll in said action.

In witness whereof I have this day set my hand and the seal of the above-named court, this 10th day of June, A. D. 1885.

[SEAL.]

THEO. MUFFLY, *Clerk*,
By LESLIE SULGROVE,
Deputy Clerk.

366 BRUNO BEAUPRE }
vs.
CHARLES YOUNG and CLARENCE A. WINCHESTER. }

TERRITORY OF MONTANA, } ss:
County of Yellowstone, }

I, John Coburn, associate justice of the Territory of Montana and

judge of the first judicial district thereof, in which district is embraced and included the county of Custer, in said Territory, do hereby certify that Theo. Muffly is the duly appointed and qualified clerk of the district court of the first judicial district of said Territory, acting as such, and that Leslie Sulgrove is the duly appointed and qualified deputy clerk of said district court in and for the county of Custer, acting as such; and I do further certify that the attestation and certificates of said clerk by the said deputy clerk to each and every of the papers, records, and judicial proceedings hereto appended are in due form and are correct.

Dated this eleventh day of June, A. D. 1885.

JOHN COBURN, *Judge.*

STATE OF MINNESOTA, }
County of Ramsey. }

District Court.

DANIEL R. NOYES *et al.* }
vs.
BRUNO BEAUPRE *et al.* }

The foregoing contains all the evidence introduced or offered, objections made, rulings made, and exceptions taken during the trial of the above-entitled action, and is a full, complete, true, and faithful statement of all that took place during that trial.

September 11th, 1885.

WESTCOTT WILKIN,
District Judge.

Filed Sept. 11, 1885.
R. W. BELL, *Clerk.*

367 STATE OF MINNESOTA, }
County of Ramsey. }

In District Court.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, as Copartners,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, as Copartners.

To James N. Granger, Esq., plaintiffs' attorney:

You are hereby notified that the defendants in the above-entitled action will apply to said court, at a special term thereof to be held in the court-house, at St. Paul, in said county and State, at 10 o'clock in the forenoon on the 19th day of September, A. D. 1884, or as soon thereafter as counsel can be heard, for an order vacating and setting aside the verdict rendered in said action and granting a new trial thereof on the following grounds:

First. That the verdict is not justified by the evidence and is contrary to law.

Second. Error in law occurring at the trial and excepted to by said defendants.

Such motion will be made upon all the record files and settled case in said action.

Yours, WARNER, STEVENS & LAWRENCE,
Attorneys for Defendants.

Due and seasonable notice of the foregoing notice admitted at St. Paul, Minn., this 11th day of Sept., 1885.

JAMES N. GRANGER,
Plaintiffs' Attorney.

District Court, Ramsey County.

D. R. NOYES *et al.*
against
BRUNO BEAUPRE *et al.*

368 After hearing arguments of counsel for the respective parties, ordered that the motion for a new trial herein be, and the same is hereby, denied.

WESCOTT WILKIN,
District Judge.

St. Paul, Oct. 21, 1885.

Filed Oct. 21, 1883.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

CHARLES G. LAWRENCE, being first duly sworn, deposes and says that at the city of St. Paul, in said county, on the 24th day of October, A. D. 1885, he duly served the annexed notice of appeal and undertaking to stay proceedings thereon upon the attorney of the plaintiffs named therein, James N. Granger, Esq., by leaving a true and correct copy of said notice and aforesaid undertaking respectively at the office of said James N. Granger, in said city, at 11 o'clock a. m. on that day, with the person then and there in charge thereof—that is to say, with T. R. Kane.

CHARLES G. LAWRENCE.

Subscribed and sworn to before me this 20th day of October, A. D. 1885.

[SEAL.]

E. D. YORK,
Notary Public, Minn.

STATE OF MINNESOTA, }
County of Ramsey. }

District Court, — Judicial District.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, Plaintiffs,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Defendants.

You will please take notice that the defendants appeal to the supreme court of the State of Minnesota from the order of this
369 court in this action entered on the 21st day of October, 1885, directing that the defendants' motion for a new trial of said action be, and that the same is, denied.

WARNER, STEVENS & LAWRENCE,
Attorneys for Defendants.

To James N. Granger, Esq., attorney for plaintiffs, and R. W. Bell, Esq., clerk of the district court.

Due service of the within notice admitted at St. Paul, Minn., this 27th day of October, 1885.

R. W. BELL,
Clerk of Court.

Ramsey County District Court, State of Minnesota.

DANIEL R. NOYES, CHARLES P. NOYES and EDWARD H. CUTLER, Plaintiffs,
against
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Defendants.

Whereas an order was entered in the above-entitled action in the district court of the county of Ramsey on the 21st day of October, 1885, directing that the defendants' motion for a new trial of said action be, and the same is hereby, denied; and whereas the said defendants, feeling aggrieved thereby, desire to appeal therefrom to the supreme court of this State:

Now, therefore, we, Maurice Auerbach and Dennis Ryan, of Saint Paul, Ramsey county, Minnesota, do undertake and bind ourselves in the sum of sixty-five hundred dollars that the said appellants, Bruno Beaupre, Frank Keogh, and John F. Broderick, shall pay the costs of said appeal and the damages sustained by the respondents in
370 consequence thereof if said order or any part thereof is affirmed or said appeal dismissed and shall abide and satisfy the judgment or order which the appellate court may give therein.

Dated this 23d day of October, 1885.

MAURICE AUERBACH. [SEAL.]
DENNIS RYAN. [SEAL.]

STATE OF MINNESOTA, } ss:
County of Ramsey, }

MAURICE AUERBACH and DENNIS RYAN, of Ramsey county, Minn., the sureties named in the within undertaking, being severally sworn, each for himself says that he is a resident and freeholder of said State — worth the sum of thirteen thousand dollars over and above his just debts and liabilities and exclusive of property exempt from execution.

MAURICE AUERBACH.
DENNIS RYAN.

Subscribed and sworn to before me this 23d day of October, 1885.

E. D. YORK,
[NOTARIAL SEAL.] *Notary Public, Ramsey Co., Minn.*

I hereby approve the within undertaking and the sureties thereon. Dated St. Paul, Minn., Oct. 25th, 1884.

WESCOTT WILKIN,
District Judge.

Filed Oct. 24, 1885.

371 STATE OF MINNESOTA, }
County of Ramsey. }

District Court, Second Judicial District.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, Plaintiffs,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Defendants.

Pursuant to the verdict of the jury duly filed and entered in the above-entitled action on the 30th day of June, 1885—

Now, on motion of James N. Granger, Esq., plaintiffs' attorney, it is hereby adjudged that the plaintiffs herein recover of said defendants, Bruno Beaupre, Frank Keogh, and John F. Broderick, the sum of thirty-three hundred and thirty-four $\frac{86}{100}$ dollars damages, with two hundred and twenty-six and $\frac{41}{100}$ dollars costs and disbursements, in all amounting to $3,561.27.

Signed this 17th day of November, A. D. 1886.

R. W. BELL, *Clerk.*

Damages	$3,041 00
Interest	293 86
	$3,334 86
Costs and disbursements for items (see judgment-roll)	226 41
	$3,561 27

(Title.)

You will please take notice that the above-named defend-
372 ants appeal to the supreme court of the State of Minnesota from the judgment of this court in this action entered on the 17th day of November, 1886, in favor of said plaintiffs and against said defendants for the sum of $3,561.27, damages and costs.

WARNER, STEVENS & LAWRENCE,
Attorneys for Defendants.

To James N. Granger, Esq., attorney for plaintiffs, and R. W. Bell, clerk of the district court.

Due service of the within notice of appeal, together with a copy of the bond on appeal and the approval of the district judge endorsed thereon, admitted at Saint Paul, Minn., November 29th, 1886.

JAMES N. GRANGER,
Plaintiffs' Attorney.
R. W. BELL, *Clerk of Court.*

Filed Nov. 29, 1886.
R. W. BELL, *Clerk.*

(Title.)

Whereas the defendants in the above-entitled action appeal to the supreme court of the State of Minnesota from the judgment made and entered herein on the 17th day of November, A. D. 1886:

Now, therefore, we, Maurice Auerbach and Jasper B. Tarbox, undertake, promise, and agree to and with said plaintiffs that said defendants shall pay all costs and charges that may be awarded against them on such appeal, and if the judgment appealed from or any part thereof is affirmed the appellants will pay the amount directed to be paid by the judgment or the part of such amount as to
373 which the judgment is affirmed, if it is affirmed only in part, and all damages which are awarded against the appellants upon the appeal, conditioned, however, that our liability hereunder shall not exceed the sum of fifty-five hundred dollars.

Dated this 29th day of November, 1886.

MAURICE AUERBACH. [SEAL.]
JASPER B. TARBOX. [SEAL.]

Signed, sealed, and delivered in presence of—
GEO. L. BEARDSLEE.
CHARLES G. LAWRENCE.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it known that on this 29th day of November, A. D. 1886, before me personally appeared Maurice Auerbace and Jasper B. Tarbox, to me known to be the same persons described in and who executed

the foregoing undertaking, and each for himself acknowledged the same to be his own free act and deed.

[SEAL.] CHARLES G. LAWRENCE,
Notary Public, Minn.

STATE OF MINNESOTA, *County of Ramsey.* } ss:

MAURICE AUERBACH and JASPER B. TARBOX, the persons named in and who executed the foregoing undertaking, being first duly sworn, doth each for himself depose and say that he is a resident and freeholder of the State of Minnesota and worth the amount of fifteen thousand dollars above his debts and liabilities and exclusive of his property exempt from execution.

MAURICE AUERBACH.
JASPER B. TARBOX.

374 Subscribed and sworn to before me this 29th day of November, 1886.

[SEAL.] CHARLES G. LAWRENCE,
Notary Public, Minn.

The within undertaking and the sureties therein are hereby approved this 29th day of November, 1886.

WESCOTT WILKIN,
District Judge.

Filed Nov. 29, 1886.
R. W. BELL, *Clerk.*

STATE OF MINNESOTA, *Ramsey County,* } ss:

I, R. W. Bell, clerk of the district court for the second judicial district in and for said county and State, do hereby certify and return to the honorable the supreme court of said State that the foregoing are full and true copies of the original complaint, answer, reply, case, notice of motion for new trial, order denying same, notice of appeal and bonds on appeal, and judgment in the action therein entitled, and that I have compared the same and they are true and correct copies of said originals.

Witness my hand and seal of said district court, at Saint Paul, this 31st day of December, A. D. 1886.

[Seal District Court.]

R. W. BELL, *Clerk.*

375 STATE OF MINNESOTA:

In Supreme Court. April term, 1887.

DANIEL R. NOYES *et al.*
vs.
BRUNO BEAUPRE *et als.*

Appellants' Points and Authorities.

Statement.

On April 27, 1883, Charles Young, then engaged in trade at Forsyth, in Montana, and technically and perhaps practically insolvent, executed to his clerk, C. A. Winchester, a general assignment in trust for the benefit of his creditors. The business was thereafter conducted without apparent or visible change. There was no physical change of possession; goods were bought and sold as theretofore, except that when purchased from merchants who were creditors at the time of the assignment the purchases were made in the name of said Winchester, and when purchased from others they were bought in the name of Young. The sign of Charles Young remained or was put up over the store door after the assignment. Young remained in the store transacting business as before, except for
376 a short time when he was in the National Park. He was alone in physical possession of the property when the outfit was attached, in January, 1884, by the defendants in this case and others. After such attachment and while the property was in the sheriff's custody said Winchester executed to the plaintiffs in this case a paper assignment of the property so attached. The sum of $500 was paid to him for such formal transfer. This sum was the proceeds of a draft drawn by plaintiffs' attorney upon them. The proceeds were at once transmitted to certain non-attaching creditors, who refunded the same to the plaintiffs. The creditors so paid had previously formed a pool and had sent out to Montana the attorney who did this business. Plaintiffs demanded the property from the sheriff and also from the defendants herein, and thereupon brought suit against the defendants for the value of the property so attached. While this suit was pending the attachment suits in Montana passed into judgment, and upon execution the property was sold. Afterwards defendants herein answered, and, among other defenses, pleaded in bar of this action the judicial proceedings in Montana and also statutes of that Territory relating to fraud in assignments. The issues joined were tried at St. Paul before the court and a jury and resulted in a verdict in favor of the plaintiffs. A case setting forth the evidence and rulings at the trial was duly prepared, settled, certified, and filed; whereupon the same became by the statutes of Minnesota a part of the record. G. S. 1878, chap. —, sec. —. Judgment was thereupon entered upon said verdict, and the cause was removed to the supreme court by appeal from that judgment.

Under these circumstances the defense principally hinged
377 upon three questions: 1, as to the validity of the Young assignment under the laws of Montana, where it was made

and where the property was situate; 2, as to the validity of the plaintiffs' bill of sale made by the assignee to the plaintiffs after the property had been attached and while it was in the custody of the Montana sheriff; 3, as to whether the judicial proceedings in Montana afforded a complete defense to the suit as brought. The first and last questions were interwoven. The rulings of the court below relating to those questions are covered by our assignment of errors.

First. The court erred below in its charge to the jury in relation to the validity of the assignment by Young to Winchester, which rulings are set out in the paper book at folios 564 to 569, both inclusive; also at folios 606, 609, 613. The exception to such rulings appear in paper book at folios 594, 603, 609, 613.

Second. The court below erred in its charge to the jury in relation to the bill of sale from Winchester to the plaintiffs, set out in the paper book at folios 556 to 560, both inclusive, and at folios 581 and 608. The exception thereto is set out at folios 593, 594, 405, 609.

Third. The court below erred in each of its several rulings in relation to the faith and credit to be given in this action to the records in the two attachment suits pleaded in the answer, which rulings are set out in the paper book at folios 606, 607, 609, 610. The second exception to said rulings appears after the several requests.

Argument.

First. The Young assignment having been made in Montana and the property being situate there, the transaction should have
378 been judged by the laws of Montana, which provided that such an assignment, unless accompanied by an immediate delivery and followed by an actual and continued change of possession, shall be conclusive evidence of fraud as against creditors then subsisting or those becoming such meanwhile.

The court charged that constructive delivery, constructive possession, was sufficient if accompanied with control or dominion. This construction of the Montana statute was contrary to its words and accorded no force or effect to the marked difference between it and like statutes of other States and Territories. The history of the question involved in the courts clearly indicates that the language of the Montana code was used *ex industria* to forever do away with metaphysical questions and vexatious inquiries as to mental habitudes and to confine inquiry to physical and visible facts.

Allen *vs.* Massey, 17 Wall., 353, 354.

Second. The undisputed facts relating to the bill of sale from Winchester to plaintiffs were that certain creditors of Young under his assignment employed an attorney to go to Montana after this attachment; that he went there for them and obtained from Winchester a bill of sale of the attached property, and gave him a draft on the plaintiffs with the mutual understanding that all the proceeds save a small amount *was* to be by him remitted to the clients of said attorney, and that this small amount might be kept by Win-

chester, not as purchase-money, but for the trouble; that the proceeds were so remitted at once, and all the money so remitted was promptly turned over to the plaintiffs, after which matters remained as before, except that plaintiffs had the bill of sale and Winchester had $50 or $100 for his trouble.

379 We contend that as the common law was the law of Montana by express enactment that this transaction was a nullity, because the property was then attached, and it was merely an attempt to introduce a new party to pending litigation.

The fact that plaintiffs and their associates were creditors under the Young assignment was wrongfully and perhaps unconsciously regarded as a relevant and material fact.

Gordon *vs.* Massey, 12 Minn., 145.

Third. Winchester could not have maintained trespass, trover, or replevin against the Montana sheriff for the property in controversy, because the sheriff levied upon it under and by virtue of writs of attachment which commanded him to seize any property belonging to said Winchester. This property did belong to him at law, and the fact that he was charged with equitable obligations with respect to it in favor of third parties was immaterial in such an action. It was not competent by assignment for Winchester, while the goods were held by the sheriff, to impart to the plaintiffs any other or greater rights than he had himself then and there.

U. S. Constitution, art. 4, sec. 1.
U. S. Rev. Stat., sec. 905.
Van Buskirk *vs.* Gree, 7 Wall., 139.
Harvey *et al. v.* R. I. L. W., 3 Otto, 664.
Warner *vs.* Jaffrey, 96 N. Y., 255.
Dicey on Parties, rules 6 and 81.
Chitty's Gen. Pr., 1 vol., 365; 2 vol., 403, 404, 426, 427.
Crapo *vs.* Kelly, 16 Wall., 610, 622.
Lewin on Trusts, 223, 224, 205, 450.
Happgood *vs.* Houghton, 10 Pick., 154.
Ashby *vs.* Ashby, 7 B. & C. 44.

380 Story on Contracts, sec. 287.
Williams on Ex., side p. 1527, 1511, 1275, 1712.
Toller on Ex., 487.
Corner *vs.* Shew, 3 M. & W., 350.
Taylor *vs.* Davis, 110 U. S., 330.
Kripendorf *vs.* Hyde, 110 U. S., 276.
Van Norden *vs.* Morton, 99 U. S., 378.
Snell's Prin. of Equity, 50, 96, 97.
High on Injunctions, 144.
Chouteau *vs.* Snydam, 21 N. Y., 179, 182.
Perry on Trusts, sec. 455.
Wightman *vs.* Townroe, I. M. & S., 412.
Ex parte Garland, 10 Ves., 119.

All of which is respectfully submitted.

WARNER & LAWRENCE,
Attorneys for Appellants.

381 STATE OF MINNESOTA:

Supreme Court. General, April, Term, A. D. 1887, Thursday Morning, 9.30 o'clock.

APRIL 21ST, A. D. 1887.

Court convened pursuant to adjournment, all the justices being present.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, Partners as Noyes Bros. & Cutler, Respondents,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. Broderick, Partners as Beaupre, Keogh & Co., Appellants.
} No. 152, 4809.

This matter, which is an appeal from a judgment heretofore entered in this action in the district court in and for the county of Ramsey, State of Minnesota, having come on in due course to be heard at the present term of this court, and it being made to appear to this court that the exceptions taken and points presented by the appellants on this appeal are the same exceptions and same points heretofore presented and argued to this court upon a former appeal from an order denying a motion for a new trial in the court below and which said exceptions and points were considered and decided by this court, now, therefore, it is ordered and adjudged that said exceptions and points be overruled for the reasons stated in the opinion in such former appeal and the judgment appealed from be, and the same is hereby, in all matters affirmed, and that proceedings on the judgment herein be stayed for ten days from the entry thereof. Let judgment be entered accordingly.

A true record.

Attest: J. D. JONES, *Clerk.*

The foregoing is a full and true copy of the minutes of argument and order in the above-entitled cause.

[Seal of Supreme Court, Minn.]

Attest: J. D. JONES, *Clerk.*

382 [Endorsed:] 4809. State of Minnesota, supreme court. Daniel R. Noyes *et al.*, respondents, *vs.* Bruno Beaupre *et al.*, appellants. Copy of minutes of argument. Filed Apr. 29, A. D. 1887. J. D. Jones, clerk. T. R. "E," 616.

383 Supreme Court. April Term, 1886.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, Respondents,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Appellants.
} Syllabus.

Evidence held sufficient to support the finding necessarily included in the verdict that the possession of the assigned property was immediately delivered to and remained in the assignee.

The employment of the assignor by the assignee to act as clerk and assist in the sale of the assigned property is not conclusive evidence of fraud.

Where an assignee of a stock of merchandise continued the business and made additional purchases of goods, which were added to and intermingled with the assigned property with the assent of creditors, who, after notice of the assignment and his purpose so to continue and manage the business in the execution of his trust, continue to make sales to such assignee for such purpose and to accept dividends from him on both old and new
384 accounts, held that such creditors, unless actually mislead without fault or laches on their part, were bound by the assignment, and could not thereafter attach the assigned property for the individual indebtedness of the assignor or assignee.

Held, also, that subsequent to an attachment of the assigned property the assignee might sell and transfer the title to the same, and that the vendees thereof might test the validity of the attachment in action against the sheriff for the conversion of the property.

385 Supreme Court. April Term, 1886.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, Respondents,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Appellants.
} Opinion.

On the 27th day of April, 1883, Chas. Young, a merchant, doing business at the town of Forsyth, in Montana Territory, made an assignment of his goods and property to one C. A. Winchester. He was then owing divers persons and firms, including the plaintiffs and defendants.

The assignee, it is alleged, took charge of the property and proceeded to notify the creditors of the assignment, made payments on account of existing indebtedness to the parties *of* this suit and other creditors, and also notified them of his intention to continue business and to pay them as fast as sales and collections would permit, and, in order to make the stock available, solicited further sales from

the defendants and others of such goods as he might from time to time require. The business was accordingly so carried on
386 during the remainder of the year, new purchases being made of the defendants and sales and remittance continued.

A second payment of $115 was made upon defendants' old account subsequent to the assignment.

The new purchases made of defendant- amounted in all to the sum of $2,668.94, upon which payments were made by the assignee at divers dates between June 8 and Nov. 12, 1883, amounting to $1,737.50, leaving a balance due them thereon of $931.44 and on the old account of Young $683.71. The goods purchased by the assignee were added to and intermingled with the assigned stock and were treated as a part thereof and belonging thereto by the assignee, and, as the evidence also tends to show, by the defendants, also.

In Jan., 1884, the defendant- brought a personal action against Young to recover the balance of the old account, and sued Young and Winchester for the amount due for purchases made by the assignee to replenish the stock, and in each case attached the stock of goods then on hand and afterwards recovered judgments therein—on the 1st, on May 2nd, 1884, and in the second action on November —, 1884—and thereafter executions were issued, and the
387 property attached was sold thereon to the defendants by the sheriff.

After the attachments were levied and on or about Jan'y —, 1884, the plaintiffs purchased of the assignee, Winchester, the goods and property held by him, and the proceeds were distributed among certain creditors, and the plaintiffs thereafter demanded of the defendants the goods held under their attachments, and upon the refusal of the latter to release or deliver the same brought this action.

The action is in fact prosecuted for the benefit of other creditors as well as the plaintiffs, several of the smaller creditors having in the meantime been paid in full by the assignee.

The complaint in this action was held sufficient upon *upon* demurrer by this court (32 Minn., 496), and we are not disposed to reconsider the question on this appeal.

If, therefore, the evidence upon the trial was sufficient to support the complaint the plaintiff was entitled to recover, and the order denying a new trial should be affirmed unless the defendants' allegations of fraud are true or their exceptions to the rulings of the court are well taken.

The answer denies the validity of the assignment set up in the complaint, and alleges that it was made to defraud the cred-
388 itors of Young, and that it was not accompanied by an immediate and continued change of possession of the assigned property, as required by law. The evidence, however, tends to show such change of possession.

The fact that Young remained in the store as clerk or agent of the assignee was not conclusive evidence of fraud nor necessarily inconsistent with the good faith of the transfer or the possession of Winchester as assignee. These questions were fairly submitted to

the jury upon the evidence, and the jury were cautioned by the court that if they found his (Young's) employment was merely colorable and intended to give him the management of the property for his own benefit, then it was a fraud upon his creditors.

It was irregular for the assignee to continue the business as he did, but there was evidence sufficient to justify the jury in finding that the defendants were notified of his manner of conducting the business, including his plan of purchasing new goods and incorporating them with the old stock on hand, they receiving payments from time to time out of the proceeds of the stock so intermingled, and that they acquiesced therein and waived such irregularity.

The court did not hold that in order to entitle the defend-
389 ants to attack the assignment it was necessary for them to refund payments already received from the assignee, but charged the jury that although the defendants had notice of the manner of conducting the business, yet if their assent was given in ignorance of the fraudulent character of the assignment, if such it was, and that Young and Winchester were carrying out a fraudulent purpose, then the defendants were not bound by their assent, but might retract it and pursue their legal remedies. The rights of the defendants were duly guarded by the court in its charge and the question of fraud and waiver properly submitted to the jury. The defendants knew that Young still remained in the store and was assisting in carrying on the business, and they had received a letter from him, presumably in due course, dated May 7, 1883, written and signed by him on behalf of the assignee, similar in character to one previously written by the assignee, informing them of the plan of conducting the business and settling for past and future indebtedness, and seeking a continuance of their relations as customers of the defendants, and proposing to continue the business in this way until all
390 his indebtedness was liquidated.

The legal question as to the right of the plaintiff to maintain an action of this kind was determined upon the former appeal. The sale was good as between the plaintiff and Winchester and was sufficient to pass the title to the goods for the purpose of the action.

Whether if the defendants were pursuing Winchester as assignee plaintiff might not be joined and compelled to account is a question not before us. The fact that the goods had been levied on under the attachment did not prevent a sale, and the possession or value thereof may be recovered by the purchaser if the attachments prove invalid.

Drake on Attach'ts, § 222.
Tiffany & Bullard on Trusts, 812.
Hill on Trustees, *274, note.

Order affirmed.

VANDERBURGH, *J.*

391 [Endorsed:] 4380. State of Minnesota, supreme court. Daniel R. Noyes *et al.*, resp'ts, *vs.* Bruno Beaupre *et al.*, app'ts. Opinion & syllabus. Filed Oct. 13, 1886. Sam. H. Nichols, clerk. April tr., 1886. Vanderburgh, J.

392 State of Minnesota, Supreme Court. April Term, A. D. 1887.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. Cutler, Partners as Noyes Bros. & Cutler, Respondents,
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Partners as Beaupre, Keogh & Co., Appellants.
} No. 152.

Pursuant to an order of court duly made and entered in this cause on the 21st day of April, A. D. 1887, it is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the second judicial district sitting within and for the county of Ramsey, be, and the same hereby is, in all things affirmed.

And it is further determined and adjudged that the respondents above named do have and recover of said Bruno Beaupre, Frank Keogh, and John F. Broderick, partners as Beaupre, Keogh & Co., appellants herein, the sum and amount of thirty-nine dollars ($39.00), costs and disbursements in this cause in this court, and that said respondents have execution for the enforcement thereof.

Dated and signed this 29th day of April, 1887.

By the court.

Attest: J. D. JONES, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25 00
Clerk's fees for making return	
Printer's fees for printing respondents' brief	3 00
Clerk's fees, supreme court	10 75
Execution and return	
Filing mandate and docketing transcript	
1 affidavit	25
Postage	
Copying return for printer	
	$39 00

393 [Endorsed:] 4809. State of Minnesota, supreme court. Daniel R. Noyes *et al.*, respondents, *vs.* Bruno Beaupre *et al.*, appellants. Transcript of judgment. Filed April 29th, A. D. 1887. J. D. Jones, clerk. James N. Granger, attorney for respondents. Page No. 218, "I" Book.

STATE OF MINNESOTA, *Supreme Court,* } *ss:*

I, J. D. Jones, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled as appears from the original remaining of record in my office; that I have carefully compared the within

copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 29th day of April, A. D. 1887.

[Seal of Supreme Court, Minn.]

J. D. JONES, *Clerk.*

394 STATE OF MINNESOTA, *Supreme Court,* } ss:

I, J. D. Jones, clerk of said court, do hereby certify that I have carefully compared the within and foregoing copy with the original papers, records, and judgment-roll in the within-entitled action remaining on file and of record in my office, and that the same is a true and authentic transcript and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at the capitol, in the city of St. Paul, this third day of October, A. D. 1887.

[Seal of the Supreme Court, State of Minnesota.]

J. D. JONES,
Clerk of the Supreme Court of the State of Minnesota.

395 [Endorsed:] No. 4809. State of Minnesota, supreme court. D. R. Noyes *et al.*, respondents, against Bruno Beaupre *et al.*, appellants. Judgment-roll. Filed Apr. 29, 1887. J. D. Jones, clerk. James N. Granger, attorney for respondents.

Endorsed on cover: Minnesota supreme court. No. 160. Bruno Beaupre, Frank Keogh, and John F. Broderick, plaintiffs in error, *vs.* Daniel R. Noyes, Charles P. Noyes, and Edward H. Cutler. Filed October 8, 1887.

SUPREME COURT

—OF—

THE UNITED STATES.

JAMES H. McKENNEY
CLERK

OCTOBER TERM, 1890.

Nos. 159 and 160.

BRUNO BEAUPRE, *et. al.*,

Plaintiffs in Error,

vs.

DANIEL R. NOYES, *et. al.*,

Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

I. V. D. HEARD,

Attorney for Plaintiff in Error.

The action first came before the State Supreme Court on appeal from an order sustaining a demurrer to the complaint, when such order was reversed—*See 32 Minn. Rep. 496.*—The cause was then remanded to the Court below whereupon said answer was interposed and issue was joined by reply as above stated. Upon rendition of said verdict a case containing all the evidence, rulings and exceptions was prepared, certified by the trial judge and filed, whereupon it became part of the record (27 to 255). A motion for a new trial was then made (255—256) which was denied (256) and on appeal taken from that order, it was affirmed by the State Supreme Court. This decision was filed Oct. 13, 1886—*See 36 Minn. Rep. 49*—under Minnesota practice the cause was then remanded to the trial Court, where judgment was thereupon entered upon said verdict Nov. 17, 1886 (258) after which an appeal was taken from such judgment to the State Supreme Court where it was affirmed April 21, 1887 (264) and final judgment was perfected in that Court April 29, 1887 as above stated.—This final judgment of the State Supreme Court resulted from all the several rulings so made and affirmed, and is the judgment to review and reverse which this writ of error was sued out. Another writ of error was sued out from said judgment of the State Supreme Court affirming said order denying a new trial upon the theory that under the Minnesota practice that was final judgment within the meaning of the Act of Congress. The return on that writ is also on file in this Court: and as the last return comprises all material matter in the previous return a stipulation has been made dispensing with the printing of the other record (1).

All the facts of this case transpired in Montana and the rights of the parties should have been adjudged according to the laws of that jurisdiction. The facts were as follows: On April 27, 1883, Chas. Young being then a trader at Forsyth in Montana, assigned his property to his clerk C. A. Winchester, in form for the benefit of his creditors (145). On May 1, 1883 said Winchester wrote to Beaupre, Keogh & Co., (then creditors of said Young.) the letter in evidence (28) and on May 7, 1883 said Young also wrote to said firm the letter in evidence (31). The business was continued after said assignment as before with the same sign over the store door "Charles Young, dealer in drugs, notions and general merchandise" (43 bottom). Both Young

and Winchester testified at the trial as witnesses on part of the piaintiffs below, and to the effect that the business was conducted after the assignment as previously: that new goods were ordered sometimes by one of them and sometimes by the other: that both remained in charge of the business except for a short season in the summer and fall of 1883 when Young was in the National Park: that about the beginning of Nov. 1883 Young returned and Winchester then sent his wife to Miles City and broke up housekeeping, and about Dec. 20, 1883 he followed her and there remained until April 1884: that in the forepart of Dec. 1883 an inventory was taken whereupon said Young wrote said B. K. & Co., the letter in evidence (75, 76) whereupon they forwarded to Strevel & Garlock, Attorneys at Miles City, their claim against Young before the assignment and their claim for goods furnished after the assignment and thereupon said attorneys looked into the matter, and finding said Young in full possession of the store and said Winchester living at Miles City, they began two suits, one against said, Young on the old bill of $683.71. The other against said Young and Winchester on the new account for $931.44; and in each suit sued out writs of attachment under which the sheriff, on January 3rd, 1884, seized the stock in controversy, which then comprised two classes of goods:—one consisting of goods on hand when said assignment was made—the other of goods purchased afterwards. Aterward on Jan. 15th, 1884 an attorney came on from St. Paul and induced said Winchester to execute to the plaintiffs below bill sale in evidence covering said attached goods (158,159), at the same time said attorney paid to said Winchester $550: of which he kept $50 and distributed the residue by drafts to those of Young's old creditors who had sent this atty. out there to look after their interests, and who thereupon returned the amounts as sent them to the plaintiffs below who had furnished said atty. with said money. After this there was served on said sheriff, the paper in evidence as Exhibit "M" (160, 161), and later the defendants below received the communication in evidence as Exhibit "U" (163, 164). The sheriff did not surrender the attached property, and there was no proof of his having been indemnified or requested not to do so. Afterward the present action was commenced April 14th, 1884. While this action was pending the two attachment actions culminated in judgments, on which

executions were issued to said sheriff, who thereupon sold the attached property on December 24th, 1884, for $677.90 (217, 218) and applied the net proceeds as far as it would go on said writs, when said notice was served on said sheriff he also held a third writ of attachment sued out by Hanauer Bros., of Bismarck, in a suit by them against said Young. What became of that suit and writ did not appear.

The defendants below by their answer pleaded said facts and certain laws of Montana applicable thereto and contended at the trial: 1—That said assignment upon the undisputed facts of the case was conclusively void under the laws of Montana. 2—That the same had been abandoned by mutual consent of all concerned. 3—That after said assignment Young and Winchester had become virtually co-partners engaged in carrying on said business, and joint purchasers of all goods thereafter purchased. 4—That the plaintiffs below, having obtained their pretended bill of sale with full notice of said attachments, and while the property was in custody of the law, were conclusively bound by the judgments and proceedings in said two actions. 5—That said attachments, judicial proceedings, judgments, executions and sales constituted a perfect defense to this action under the laws of Montana and the Federal Constitution *Art. 4, Sec. 1* and the Acts of Congress *U. S. Rev. Stat. Sec. 709, 905.* The trial Court instructed the jury properly according to the laws and jurisprudence of Minnesota but contrary to defendants said contentions. The propriety of the charge in these respects is now here for review upon objections duly made and exceptions duly taken on part of the defendants below. (*141, 142, 143, 144, 145.*)

When the facts of this case transpired there were in force in Montana the laws pleaded in the answer (13, 14, 15). There are various compilations of those laws and in the book entitled "Laws of Montana, Revised Statutes 1879," these laws will be found at pp. 436, 75.

FIFTH DIVISION *p. 436. Ch. 13, Sec. 165.* All deeds of gift, all conveyances and transfers, or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors existing or subsequent of such person.

Ch. 13, Sec. 169, p. 436. Every sale made by a vendor of

goods and chattels in his possession or under his control and every assignment of goods and chattels, unless the same be accompanied by the immediate delivery, and be followed by an actual and continued change of possession of the thing sold and assigned shall be conclusive evidense of fraud as against the creditors of the vendor or the person making such assignments, or subsequent purchasers in good faith.

Ch. 13, Sec. 170, p. 436. The term creditors, as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control.

Ch. 13, Sec. 172, p. 436—Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or in goods in action, or of the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and any bond or other evidences of debt given, suits commenced, decrees or judgment suffered, with the like intent as against the person hindered, delayed or defrauded, shall be void.

FIRST DIVISION *Code of Civil Procedure p. 75. Ch. 4, Sec. 191.* If any personal property attached be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third party within five (5) days, if the plaintiff resides within the county, otherwise ten days, after notice to plaintiff's attorney, unless that plaintiff give to the sheriff good and sufficient bond to indemnify him against loss or damage by reason of holding such property. (13, 14, 15, 109).

ASSIGNMENT OF ERRORS.

I.

The Trial Court erred in charging the jury as follows, viz: "The statute of Montana, gentlemen, requires that the assignment must be followed by the immediate and actual delivery of possession to the assignee and by the continued possession of the assignee during the assignment, and if that is not done the as-

signment is void as against creditors. The possession must be actual; the actual *control* of the property must be in the hands of the assignee. I do not mean by that that the assignee must actually have his hands upon the goods or actually be in the store all the while, but he must have the *actual control* of the property which has been placed in his hands under the assignment. Now, Winchester and Young, both testified that immediately after this assignment Mr. Winchester was placed in possession and took possession. They testified that Young was employed a portion of the time simply as a clerk for the assignee. The assignee, gentlemen, had a right to employ clerks for the necessary transaction of the business; *and he had a right to employ Young, if it was a real employment; but if it was a mere colorable employment, if it was a sham,—if it was intended to give Young the real management of the property,—with a view of enabling him to use the property for his own benefit; then it was a fraud upon the creditors.* The defendants claim that the employment of Young as the clerk was a mere pretense; that the circumstances in evidence—the manner in which the business was conducted—the language of the letters in evidence from Young and Winchester to the creditors—the manner in which payments to the creditors were made—no dividends being declared and they paying without reference to any pro rata of distribution and especially the payment to Bohrer & Hulsiek of some $800.00 upon their claim of $1100.00 when compared with the payments to other creditors—all goes to show that there was no actual delivery of possession to Winchester and that Young was in the actual control of the store and the goods and was conducting the business at his own will and pleasure and not for the purpose of protecting and paying the creditors. It is for the jury to say whether this was an honest assignment, made for the sole purpose of converting all of Young's property into money as fast as could reasonably be done and applying it to the payment of his creditors, or whether it was made with the intent to hinder, delay or defraud his creditors." (*See record pp. 136, 137*). "If Winchester was in the store exercising *dominion* over the goods as assignee, *that was sufficient possession by him to protect his title as against any attaching creditor. He could employ Young as his agent or clerk to assist him in the business and such employment would not prejudice his rights as assignee to the property.*

His temporary absence leaving Young in charge of the store as his clerk or agent would not prejudice his rights as assignee nor subject the goods to attachment. Possession of Young as clerk during such temporary absence of Winchester would be the possession of Winchester and in that connection I call your attention to the general charge that if this employment of Young was a sham and a mere pretense and not in good faith, but he was employed with the intention of giving him control of the property so that he could dispose of these goods for his own advantage, without reference to the advantage of the creditors, why, *then* the employment of him and his possession would not be the possession of the assignee *and it would not be such a possession as is required by the statute of Montana.*" (See record p. 139.) "This assignment having been made in Montana and the goods being situated there, the transaction is to be judged by the laws of that Territory; and they provide that every assignment of goods and chattels, unless the same be accompanied by the immediate delivery and followed by an actual and continued change of possession of the things sold and assigned, shall be *conclusive* evidence of fraud as against the creditors of the person making such assignment and the term creditors, as here used, includes all persons who are creditors of the assignor at any time while the assigned goods remain in possession of the assignor, I so charge you. I also charge you that these provisions of the Montana laws are not satisfied by a mere nominal change of possession; there must also be an actual and continued change of possession in fact; that is to say, there must have been such a change of possession as gave to the assignee the control of the goods, to be managed by him for the benefit of the creditors; but the mere fact that he had employed another person as a clerk or as an assistant, so long as he retained the control and management of the business himself would not render the assignment invalid." (*See record pp. 140, 141.*)

II.

The trial Court erred in refusing defendants' request to charge the jury as follows, viz: "If Charles Young and Clarence A. Winchester, or either of them, had a leviable interest in the goods or in any of them, then the plaintiffs cannot recover in this action. If any of the goods in controversy belonged to Charles

Young, then he had a leviable interest in them; and so of said Winchester." (*Record pp. 143, 144.*)

III.

The trial Court erred in refusing defendants' request to charge the jury as follows, viz: "The records in the two suits pleaded in the answer are entitled to the same force and effect in Minnesota that they have in Montana; and inasmuch as the plaintiffs or their assignor did not intervene or claim the goods in said suits or either of them, they are precluded in maintaining this action." (*Record p. 144.*)

IV.

The trial Court erred in refusing defendants' request to charge the jury as follows, viz: "Under the laws applicable thereto the defendants' attachment was paramount to the Young assignment and created the better title." (*Record p. 144.*)

V.

The trial Court erred in refusing to charge the jury as follows, viz: "If the Sheriff of Montana was holding the property under a writ in addition to the writs of the defendants, then their neglect to surrender did not constitute a conversion of the goods by them, and plaintiffs cannot, in such case, hold them for the value of the property." (*Record p. 144.*)

VI.

The trial Court erred in refusing defendants' request to charge the jury as follows, viz: "If no demand has been made on the Sheriff of Custer County, Montana, sufficient by the laws of that Territory, then the plaintiffs cannot maintain this action." (*Record p. 144.*)

VII.

The trial Court erred in its charge to the jury in relation to

the validity of the assignment by Young to Winchester. (*Record pp. 135, 136.*)

VIII.

The trial Court erred in its charge to the jury in relation to the bill of sale from Winchester to the plaintiffs below. (*Record p. 135.*)

IX.

The trial Court erred in its ruling in relation to the faith and credit *i. e.* force and effect, to be given in this action to the records in the two attachment suits pleaded in the answer. (*Record p. 144.*)

ARGUMENT.

First. This action went off in the trial Court upon the general verdict of a jury. The facts and relation, of the parties were complicated and involved. It cannot now be told whether or not the jury proceeded upon the view that the original assignment from Young to Winchester was valid or void, consequently the question whether the jury was properly instructed upon that point was and is a vital question. The jury may have found against the plaintiffs below on the question of estoppel, acquiessence or ratification on the ground that the defendants acted without full knowledge of all the material facts. In such cases the party sought to be estopped is under no duty to search for facts, it is enough that he acted in ignorance of them.

Second. If the assignment to Winchester was void, as against creditors of Young, on January 3, 1884, when the property was attached upon the two writs, one against Young, the other against Young and Winchester then the lien created by the levy was paramount to any claim to such property by or on the part of said Winchester, and in that case he could not, by the bill of sale made subsequently on January 15, 1884, impart to the plaintiffs below any greater right to said property.

THIRD. The statute of Montana applied and should have controlled. *See Mont. Rev. Stat., general laws, p. 578, ch. 13, sec. 165, 169, 170, 172* above quoted.

When Young's assignmemt to Winchester was made he was a trader at Forsyth, in Montana, and over his store door was his sign reading as follows: "Charles Young dealer in drugs, notions and general merchandise"—(*Rec. 43—44*). This assignment was made by a merchant to his own clerk. The business was continued without change—goods were bought and sold in the usual course of such a trade—the assignor both ordered goods and sold them as before (except during a short season when he went to look after another stock in charge of his brother and except during a short season while he was at the National Park). Upon the assignor's return from the Park and about Nov. 1, 1883, Winchester removed his wife to Miles City and in Dec. 1883 he followed her and was *living* with her in Miles City when the stock was attached (*Rec. 81, 82, 47, 48*). After Winchester removed to Miles City, Young in sole possession of the stock and store. There he was carrying on business in the ordinary course of a retail trade under a sign plainly and explicitly holding him out to the world as the sole proprietor. An inventory had been taken in fore part of Dec. 1883 whereupon Young wrote to the defendants below the letter in evidence as Exhibit "E" (*Rec. p. 75*). Upon receipt of this letter, manifesting that Young had finally fully resumed business, the defendants sent their two accounts, one against Young for $683.71—the other against Winchester for $931.44 to Strevell & Garlock, attorneys at Miles City, who finding that the assignment had been apparently abandoned, Young engaged in trade as usual, and Winchester living at Miles City, began two suits, one against Young on the former account, the other against both Young and Winchester on the new account, and in those suits writs of attachment were issued and on Jany. 3, 1884 the sheriff acting under these two writs and under another in favor of Hanaver Bros. of Bismarck, seized the stock which was then in the store being conducted by Young as before stated. Upon this undisputed state of facts, the Court instructed the jury to the effect that a constructive possession by the assignee was sufficient under the Montana statute, if accompanied by control or dominion.

Said Young and Winchester testified on part of plaintiffs be-

low that said assignment was accompanied by the immediate delivery of the assigned property; but they also testified to the circumstances showing that there was really no such delivery and their relation to each other that of merchant and clerk, as well as their letters of May 1 and May 7, 1883 (*See Rec. pp. 28, 31, 87.*) demonstrated that the store business went on after said assignment the same as before the assignment under the apparent proprietorship of Young whose sign "Charles Young, dealer in drugs, notions and general merchandise" was put up and kept over the store door. (*See Record pp. 43, 44.*) But the statute further provided that such an assignment must be followed *by an actual and continued change of possession* of the assigned property; and that the want of such immediate delivery, or the omission of such an *actual and continued change of possession shall be conclusive evidence of fraud* as against the assignor's creditors; also that the firm creditors included all who shall be creditors *at any time while* such goods shall remain in the possession or under the control of the assigning debtor.

Now it was an undisputed fact that when the property was attached the sheriff found them in a store, over the door of which was said sign, holding out Young as the proprietor, and it is also undisputed that the officer found said assignor, Young, engaged alone in carrying on said business as the apparent proprietor of it and that said assignee, Winchester, was not then in the town of Forsyth, where said store was, but with his wife, *living* at Miles City, (see Winchester's testimony in the Record at pp. 81, 82.) It would unduly prolong this brief to point out all the evidence showing what the real relation of these two men were and how the business was unquestionably handled. It is sufficient to state that it tended to show that new goods were bought after the assignment as before. The orders were sometimes made by Young and sometimes by Winchester. When goods were ordered from parties who were creditors under the assignment they were ordered in the name of Winchester as assignee; but when got of strangers Winchester's name was not mentioned. The current bill book was in evidence and a table taken from it was received in evidence showing to whom the new bills were addressed. (*See Record Exhibit "I," p. 153, et seq.*)

Now with this evidence before the Court, the jury was virtually instructed to the effect that in said Montana statute *actual*

meant *constructive* and that *possession* meant merely *dominion* or *control*—and that the jury might properly find the assignment to be valid under said statute unless they were satisfied that Winchester employed Young and left the store and stock in his possession for the distinct purpose of enabling him to dispose of the property and appropriate the proceeds to his own use as he should see fit.

The charge upon this branch of the case proceeded as if the words *actual and conclusive* had been left out of the statute, whereas, a comparison of the act with those of anterior date shows that these words were used *ex industria* and for the manifest purpose of closing the door to vexatious inquiries into mental habitudes, secret intuitions and to confine the evidence to physical, visable and unequivocal facts.

Burrell on assignments, sec. 280.
Allen vs. Massey, 17 Wall 353, 354.
Young vs. Pool, 13 Pac. Rep. 492 (Cal.)
Batcher vs. Berry, 13 Pac. Rep. 45 (Mont.)
Ruddle vs. Givens, 18 Pac. Rep. 421
Woods vs. Bugbey, 29 Cal. 466, (Nev.)
Bell vs. McLellan, 7 Pac. Rep. 699 (Cal.)
Ewing vs. Murray, 4 Pac. Rep. 244 (Utah.)
Comaita vs. Kyle, 5 Pac. Rep. 666, 668 (Nev.)
Dodge vs. Jones, 14 Pac. Rep. 707 (Mont.)
Cook vs. Rockford, 12 Pac. Rep. 568 (Cal.)

In the case of Dodge vs. Jones, it appeared that the horses had been re-branded by the vendor and then turned out from the vendor's corral and thereafter left to wander over the public domain (range) and it was held that while in that condition they were in the possession of the vendee under this statute. To this extent only has the Montana Court recognized a constructive possession by the vendor as sufficient to satisfy the statute.

It was just as competent for the legislature of Montana to prescribe one condition precedent or subsequent to a valid assignment of property located there as another; and the defendants below were entitled, upon the evidence, to an instruction to the jury, consonant with the statute then and there in force, and applicable to any circumstances and plight of the property that the jury would be warranted by the evidence in finding to exist.

FOURTH. If the jury had been charged properly as to force and effect of the Montana statute then they might upon the evidence have found that said assignment was void: in which case it would have been their duty to proceed upon the views that the levy of the two attachments created the paramount line, and reduced the bill of sale subsequently made by said Winchester nugatory.

This case cannot be distinguished from that of *Van Buskirk v. Green, 7 Wall 139, 146, 147, 148 et seq*—See also *Harvey v. R. I. L. Works 3 Otto 664—Warner v. Jaffrey 96 N. Y. 255.*

FIFTH. There is another view of this matter. It is not unusual for an assignee, under an assignment of a stock of merchandise for the benefit of creditors to purchase new goods in order to keep up an assortment in order to facilitate advantageously disposing of the whole property, either as a going concern or by retail. In such cases, it is competent for the vendor to sue for and collect by legal process at law the purchase price of goods so sold to the assignee, who incurs a legal and personal liability therefor. *See Davis v. Taylor, 110 U. S. 330, 334, 335, 336, 337.* It is therefore clear that the action by the defendants below against Winchester on the new account was properly commenced. The attorneys who began that action were well warranted in joining Young as a defendant in that suit under the two letters of May 1st 1883. (*See Record pp. 28, 31. See also Young's letter of Dec. 11, 1883, p. 75 also the letter to the plaintiffs below, p. 87.*)

It appeared from the record in that suit, in evidence that this action was afterward dismissed as to Young and that judgment was ultimately taken in it against Winchester alone, but as that occured after commencement of the present action, this fact may be unimportant. In that suit at law it was competent to attach any property the legal title to which stood in Winchester's name. The fact that Winchester was charged with any particular trusts in regard to property so attached was at law unimportant, because a Court at law can not and does not attend to trusts. Consequently upon levy of said attachment Winchester and his benificiaries were limited and confined to remedy by a bill in equity to restrain said proceedings at law against said property and to enforce the trusts of said assignment, if valid at that time.

The right to file that bill was not assignable. No such bill was filed. Had such a bill been filed it must have been filed in the Montana Court that had possesion of the property—*Krippendorf v. Hyde, 110 U. S. 276* and *cases there cited.*—Had such a suit been commenced the Montana Court would have been clothed with jurisdiction to protect all concerned by decreeing payment of the new bills first and a distribution of the residue only upon the old accounts, and it would have been the duty of that Court to so decree in order to properly protect the trustee. *See Taylor v. Davis ubi supra*—Under these views the bill of sale to the plaintiffs below, made *pendente lite* was merely an attempt to assign a right to file a bill in equity and void under the statute of Montana (adopting the common law and pleaded in the reply and also proven) for maintenance and champerty.

SIXTH. To the extent that Winchester was owing on the new accounts he had a benificial interest in the stock and, hence, his legal title was attachable for his own debts, and by how much more for part purchase money of such stock. *Drysdale's Appeal, 15 Pa. St. 457.*

SEVENTH. The fact that the plaintiffs below were creditors under the assignment, though pleaded in the complaint and proven, was wholly unimportant, irrelevant and immaterial to any question involved in the present action, which was one at law, predicated upon said bill of sale.

It is respectfully submitted that the judgment below should be reversed for manifest error. *Beer Co. vs Mass., 97 U. S. 26, 29, 30.*

I. V. D. HEARD,

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OCTOBER TERM, A. D., 1890.

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Plaintiffs in error.

vs.

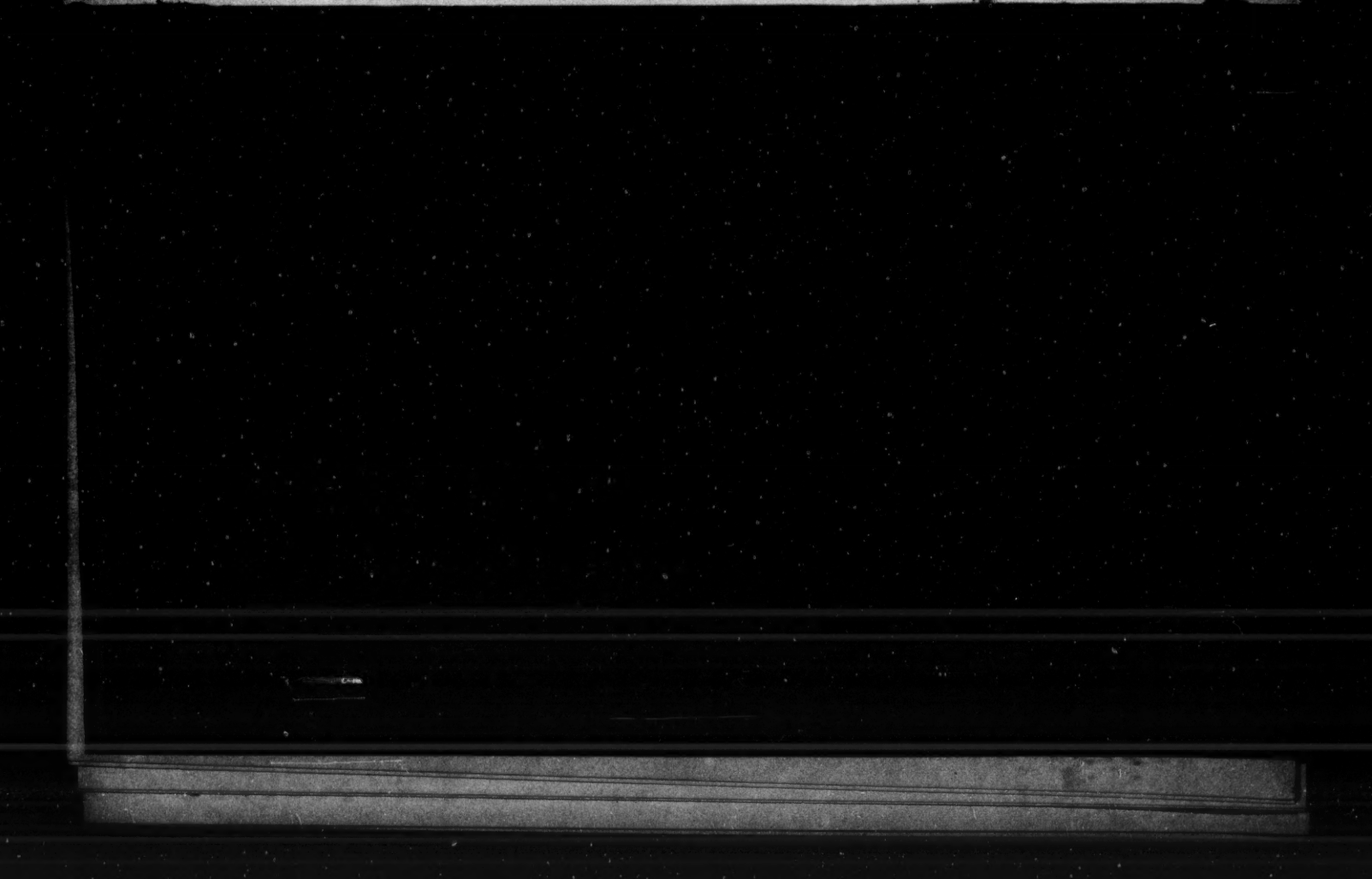
DANIEL R. NOYES, CHARLES P. NOYES AND EDWARD H. CUTLER,

Defendants in error.

In error to the Supreme Court of the State of Minnesota.

BRIEF FOR DEFENDANTS IN ERROR.

C. K. DAVIS,
Counsel for Defendants in error.



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In error to the Supreme Court of the State of Minnesota.

STATEMENT.

The defendants in error brought this action in the District Court of the State of Minnesota, both the plaintiffs and defendants being wholesale merchants engaged in business in the City of St. Paul.

It was alleged in the complaint in substance, that one

Young, a merchant doing business in Montana, being insolvent and indebted to divers parties, including both plaintiffs and defendants, for goods sold, made a valid general assignment of all his property for the benefit of his creditors, to one Winchester, who accepted the trust and took possession of the property, which consisted mainly of a stock of merchandise; that afterwards, with the consent of all the creditors, including defendants, for the purpose of enabling him to sell the assigned property to better advantage, Winchester purchased from the defendants and others, certain amounts of goods, which he added to and commingled with the assigned property, selling the same and applying the proceeds of this commingled property indiscriminately towards paying the expenses of the assignment, the debts of Young, and the indebtedness incurred by himself in making these purchases. Payments were made by him to and accepted by the defendants, Beaupre et al., out of the proceeds of these intermingled goods, both on their claim against Young and that against Winchester, with full knowledge of all these facts, they assenting thereto. Subsequently defendants, Beaupre et al., brought two actions in Montana; one against Young for the balance due from him and one against Winchester and Young to collect a balance due from Winchester for the goods he had bought and intermingled with the assigned stock as before stated. In each of these actions they caused attachments to be issued and levied upon the whole of the stock remaining unsold in the hands of the assignee. Subsequently to these levies, plaintiffs, for a valuable consideration, bought the property from the assignee and thereafter demanded possession of it from the sheriff, in whose custody it was, but he, acting under the orders of defendants, refused to surrender it. They then made a like demand on the defendants. They also refused

and plaintiffs brought this suit to recover the value of the goods.

It appears from the record, (page 266, folio 387) that the complaint in this action was held sufficient upon demurrer, by the Supreme Court of Minnesota.

The complaint having been thus sustained, the plaintiff in error afterwards made answer, setting up various matters of defense not necessary to be stated here, and also set up the proceedings in attachment in substance as hereinbefore stated. The answer also alleged, (page 15, folio 13).

"During the year 1883 and ever since there has been in force in said Territory of Montana, the following law, to-wit: "Chapter 4, section 191. "If any personal property attached be claimed under oath by a third party as his property the sheriff shall deliver the property to such third party within five days if the plaintiff resides within the county; otherwise, ten days after notice to plaintiff's attorney, unless that plaintiff give to the sheriff good and sufficient bond to indemnify him against loss or damage by reason of holding such property."

It is also alleged that such proceedings were afterwards had in the Montana suits against Young and Winchester, that final judgment was rendered against Young on the 10th day of May, 1884, for $1,024.93, and also in the suit against Young and Winchester a judgment against Winchester for $1,995.35. That upon these judgments executions were issued, and on the 24th day of December, 1884, the personal property levied upon by the sheriff under the two attachments were sold by him at sheriff's sale, for $676.90. It is alleged that these attachment levies were never vacated, and remained in full force until such sale was made, and that neither Young nor Winchester, nor the plaintiffs, nor any one ever made any objections in the Montana courts or

elsewhere, further than to make said two demands, and to bring this present action, in virtue of which facts "herein pleaded said Young, said Winchester and said plaintiffs are estopped to question or complain thereof." (Pages 15 and 16, folios 14 and 15.)

The reply, while admitting generally that judgments were entered against Winchester and Young, denies any knowledge or information sufficient to form a belief as to the respective amounts for which such judgments were entered, (page 22, folio 25; page 24, folio 27.)

Upon the trial evidence was introduced tending to prove all the allegations of the complaint.

The defendants requested the trial court to charge as follows: "The records in the two suits pleaded in answer are entitled to the same force and effect in Minnesota that they have in Montana, and inasmuch as the plaintiffs or their assignor did not intervene or claim the goods in said suits or in either of them they are precluded in maintaining this action. Which request the court refused, and to such refusal so to charge the defendants then and there duly excepted." (Page 144, folio 205.)

Verdict was found in favor of plaintiffs for $3,041.00 (page 142, folio 201.) Judgment was duly entered, (page 258, folio 371) whereupon an appeal was taken to the Supreme Court of Minnesota. The judgment was affirmed by that court, (page 268, folio 392) whereupon the defendants took a writ of error to this court.

POINTS.

I.

The brief for the plaintiffs in error (pages 5-9) contains nine assignments of error.

None of these present any federal question. Assign-

ments 3 and 9 are the only ones that even suggest such a question. These relate to one single ruling and constitute but one assignment.

The records of the Montana Court were given due faith and credit—or more correctly speaking, do not constitute defence to this action.

The grounds upon which this action was sustained are fully stated by the Supreme Court of Minnesota in its decision overruling the demurrer in the complaint, reported in 32 Minn., page 496,

Noyes and others vs. Beaupre and others.

The court holds as follows: "We fail to see why this does not constitute a cause of action. It certainly shows title and right of possession in plaintiffs too, at least, so much of the property as was assigned by Young; and, under the state of facts detailed in the complaint, we think it equally clear that, by common consent, the goods purchased by the assignee subsequent to the assignment and added to the assigned stock, became a part of the trust property, and were held by the assignee as such, for the benefit of the creditors, as fully as the part assigned. Hence none of the property could be lawfully taken on the attachment against Young. The attachment of it as the property of Winchester on the claim against him, was equally unlawful. The whole was held by him as a mere trustee for the benefit of the creditors. As between defendants and Winchester, this claim was the personal debt of Winchester, and not of the estate of Young; and it is elementary that the trust property cannot be levied upon by attachment or execution against the trustee personally. Winchester having incurred this liability with the consent of all the creditors for the more advantageous execution of the assignment, he would, undoubtedly, be entitled to be reimbursed out of the trust property in his

hands and would have a lien on it to that extent and would have a right to pay it out of the trust funds, the same as clerk hire, rent or any other expense incurred in the execution of the trust. But, whatever other remedies might be open to defendants, in view of these facts, they certainly had no right to seize the trust property on process, in an action at law against the assignee personally."

Upon the appeal from the judgment to the Supreme Court of Minnesota, that Court, passing upon this record, sustained such judgment by the following opinion, 36 Minn., page 49:

Supreme Court. April Term, 1886.

DANIEL R. NOYES, CHARLES P. NOYES, and EDWARD H. CUTLER, Respondents.
vs.
BRUNO BEAUPRE, FRANK KEOGH, and JOHN F. BRODERICK, Appellants.
} Opinion.

On the 27th day of April, 1883, Chas. Young, a merchant, doing business at the town of Forsyth, in Montana Territory, made an assignment of his goods and property to one C. A. Winchester. He was then owing divers persons and firms, including the plaintiffs and defendants.

The assignee, it is alleged, took charge of the property and proceeded to notify the creditors of the assignment, make payments on account of existing indebtedness to the parties of this suit and other creditors, and also notified them of his intention to continue business and to pay them as fast as sales and collections would permit, and, in order to make the stock available, solicited further sales from the defendants and others, of such goods as he might from time to time require. The business was accordingly so carried on during the remainder of the year, new pur-

chases being made of the defendants and sales and remittance continued.

A second payment of $115 was made upon defendants old account subsequent to the assignment.

The new purchases made of defendant amounted in all to the amount of $2,668.94, upon which payments were made by the assignee at divers dates between June 8 and Nov. 12, 1883, amounting to $1,737.50, leaving a balance due them thereon of $931.44 and on the old account of Young $683.71. The goods purchased by the assignee were added to and intermingled with the assigned stock and were treated as a part thereof and belonging thereto by the assignee, and, as the evidence also tends to show, by the defendants also.

In Jan., 1884, the defendant brought a personal action against Young to recover the balance of the old account, and sued Young and Winchester for the amount due for purchases made by the assignee to replenish the stock, and in each case attached the stock of goods then on hand and afterwards recovered judgments therein—on the 1st, on May 2nd, 1884, and in the second action on November —, 1884—and thereafter executions were issued, and the property attached was sold thereon to the defendants by the sheriff.

After the attachments were levied and on or about Jan. —, 1884, the plaintiff purchased of the assignee, Winchester, the goods and property held by him, and the proceeds were distributed among certain creditors, and the plaintiffs thereafter demanded of the defendants the goods held under their attachments, and upon the refusal of the latter to release or deliver the same brought this action.

The action is in fact prosecuted for the benefit of other creditors as well as the plaintiffs, several of the smaller creditors having in the meantime been paid in full by the assignee.

The complaint in this action was held sufficient upon *upon* demurrer by this court (32 Minn., 496), and we are not disposed to reconsider the question on this appeal.

If, therefore, the evidence upon the trial was sufficient to support the complaint the plaintiff was entitled to recover, and the order denying a new trial should be affirmed unless the defendants' allegations of fraud are true or their exceptions to the rulings of the court are well taken.

The answer denies the validity of the assignment set up in the complaint, and alleges that it was made to defraud the creditors of Young, and that it was not accompanied by an immediate and continued change of possession of the assigned property, as required by law. The evidence, however, tends to show such change of possession.

The fact that Young remained in the store as clerk or agent of the assignee was not conclusive evidence of fraud nor necessarily inconsistent with the good faith of the transfer or the possession of Winchester as assignee. These questions were fairly submitted to the jury upon the evidence, and the jury were cautioned by the court that if they found his (Young's) employment was merely colorable and intended to give him the management of the property for his own benefit, then it was a fraud upon his creditors.

It was irregular for the assignee to continue the business as he did, but there was evidence sufficient to justify the jury in finding that the defendants were notified of his manner of conducting the business, including his plan of purchasing new goods and incorporating them with the old stock on hand, they receiving payments from time to time out of the proceeds of the stock so intermingled, and that they acquiesced therein and waived such irregularity.

The court did not hold that in order to entitle the defendants to attack the assignment it was necessary for them to refund payments already received from the as-

signee, but charged the jury that although the defendants had notice of the manner of conducting the business, yet if their assent was given in ignorance of the fraudulent character of the assignment, if such it was, and that Young and Winchester were carrying out a fraudulent purpose, then the defendants were not bound by their assent, but might retract it and pursue their legal remedies. The rights of the defendants were duly guarded by the court in its charge and the question of fraud and waiver properly submitted to the jury. The defendants knew that Young still remained in the store and was assisting in carrying on the business, and they had received a letter from him, presumably in due course, dated May 7, 1883, written and signed by him on behalf of the assignee, (similar in character to one previously written by the assignee) informing them of the plan of conducting the business and settling for past and future indebtedness, and seeking a continuance of their relations as customers of the defendants, and proposing to continue the business in this way until all his indebtedness was liquidated.

The legal question as to the right of the plaintiff to maintain an action of this kind was determined upon the former appeal. The sale was good as between the plaintiff and Winchester and was sufficient to pass the title to the goods for the purpose of the action.

Whether if the defendants were pursuing Winchester as assignee plaintiff might not be joined and compelled to account is a question not before us. The fact that the goods had been levied on under the attachment did not prevent a sale, and the possession or value thereof may be recovered by the purchaser if the attachments prove invalid.

Drake on Attachments, § 222.

Tiffany & Bullard on Trusts, 812.

Hill on Trustees, *274, note.

Order affirmed.

VANDERBURGH, *J.*

The Supreme Court of Minnesota correctly stated the law in respect to attachments of or seizures by execution of trust property in suits against the trustee individually and not as trustee.

"Trustees have no right or authority to act in opposition to their trusts, nor to proceed in relation to the trust estate in a different matter from that provided in the instrument creating the trust. If they hold lands with power to sell or mortgage on specified conditions, they can not effect the title by proceeding by different means or upon other conditions. If they seek to bind the land by a confession of judgment, their action, being without authority, creates a lien on nothing but their personal interests, and cannot result in a transfer of the estate of the *cestuis que trust.*"

Freeman on Judgments, 3rd Ed., Sec. 358.

The suits against Winchester and Young were for goods sold and delivered. One was against Young (page 203) and this suit or any attachment or levy made under it could have no possible effect upon this property which he had assigned to Winchester and which assignment has been held valid.

The suit against Young and Winchester (page 219) was against them jointly, and as the Supreme Court of Minnesota properly held, no attachment or execution in such a suit, could legally be levied upon property held by Winchester as a trustee.

II.

In Buck vs. Colbath, 3 Wall, 334, this court held (344) as to the liability of an officer who has seized property under a writ of attachment.

"In the other class of writs to which we have referred the officer has a very large and important field for the exercise of his judgment and discression. *First*: in ascertaining that the property on which he proposes to levy is the property of the person against whom the writ is directed. *Secondly*: that it is property which, by law, is subject to be taken under the writ; and *Thirdly:* as to the quantity of such property necessary to be seized in the case in hand. In all these particulars he is bound to exercise his own judgment, and is legally responsible to any person for the consequences of any error or mistake in its exercise to his prejudice. He is so liable to plaintiff, to defendant, or to any third person whom his erroneous action in the premises may injure. And, what is more important to our present inquiry, the court can afford him no protection against the parties so injured, for the court is in nowise responsible for the manner in which he exercises that discretion which the law reposes in him, and in no one else."

The judgment of the Supreme Court of Minnesota should be affirmed.

C. K. DAVIS,
Counsel for Defendants in error.